

JOINT EFFECTIVE, CRACKED, INEFFECTIVE AND VACATED TRIALS IN THE CROWN COURT AND THE MAGISTRATES' COURTS

Updated : from 01 October 2007

OPERATIONAL GUIDANCE FOR MONITORING SCHEME (version 3)

Introduction

1. This Guidance covers the Effective, Cracked, Ineffective and Vacated Trials data collection scheme for trials in the Crown Court and the Magistrates' Courts, and is issued by Her Majesty's Court Service (HMCS) and the Crown Prosecution Service (CPS) on behalf of the CJS.
2. The purpose of the collection and accurate completion of the Effective, Cracked, Ineffective and Vacated Trials data is to provide accurate information as to the main reason (i) why trials do not take place when listed; (ii) why they have been taken out of the list before the trial date; and (iii) why pleas of guilty are not made earlier. This will assist in efficient management of cases, and improve public confidence in the effectiveness of the Criminal Justice System (CJS), thus contributing to the tri-lateral Public Service Agreements (PSAs). This latest version adds in additional data fields (primarily for the magistrates' courts) in order to provide a fuller picture of trials and clarifies others (now requests the CPS Area & the LJA, not HMCS Area). The additional fields cover:
 - Date of Offence (mags only)
 - Date of Charge / Laying Info (mags only)
 - Date of 1st hearing (mags only)
 - Date of latest hearing (mags only)
 - 'Type of offence' Code (coding types on reverse of form) (mags only)
 - Total no. of Trial hearings (both)
 - Was a bench / FTA warrant issued (both)
 - additional defendant category of Prolific/Priority Offender (both)
 - Length of trial : now both 'planned' (mags only) and 'actual' (both)
 - whether CJSSS applies (mags only) (i.e. a CPS / Police prosecution of an adult case commenced by way of charge; plus any other cases as agreed in an area's local scheme)
 - New Ineffective reason (S4: Defendant absent – unable to proceed as Defendant not notified of place and time of hearing)
3. The Guidance is divided into 6 sections.

- i) **Section 1** provides a common introduction to the scheme for both the Crown Court and the Magistrates' Courts (Pages 1 - 8).
 - ii) **Section 2** is a shortened version of the Guidance, which is designed for reference in court (Pages 9 - 10).
 - iii) **Section 3** covers Cracked Trials (Page 11).
 - iv) **Section 4** covers Ineffective Trials (Pages 12 - 14).
 - v) **Section 5** covers Vacated Trials in the Magistrates' Courts (Page 15).
 - vi) **Section 6** Frequently Asked Questions for the Crown Court and the Magistrates' Courts (Pages 16 - 17).
4. All information relates to both the Crown Court and the Magistrates' Courts, any differences in the processes will be indicated.
 5. **The data collected through these forms will be used as a first step to analyse the cause of why trials are ineffective, vacated or cracked and the progress of trials under CJSSS. Some may be "one offs" but others may reveal business process failures. Process failures are a waste of CJS resources and are a major cause of inefficiency and impact upon confidence.**
 6. This Guidance incorporates the changes brought about by the Criminal Case Management Framework (*the Framework*). The Framework provides practitioners with guidance on how cases should be managed most effectively and efficiently from pre-charge through to conclusion. It describes the case management procedures and rules and the roles of administrative staff operating those procedures, and of the defence. The Framework is now in two parts. A third edition which is limited to the Magistrates Court proceedings only, was issued in July 2007 and incorporates CJSSS: Magistrates business requirements (e.g. better and proportionate prosecution preparation, the service of Advance Information on the court and defence, more effective first hearings and more emphasis on out of court disposals). It emphasises the importance of the Criminal Procedure Rules in progressing criminal cases. The second edition of the CCMF, issued July 2005, is now relevant for the Crown Court only. Relevant extracts from the both editions of the Framework are attached at **Annex A**. The Framework is available on CJS Online at <http://www.cjsonline.gov.uk/framework/>
 7. The Criminal Procedure Rules on case management lays down a principle objective that courts and everyone involved in a criminal case must pursue to ensure that a case is dealt with justly. The Rules give courts explicit powers to actively manage the preparation of criminal cases waiting to be heard, to get rid of unfair and avoidable delays; and to promote certainty about what is happening for the benefit of everyone involved. The rules support the practices outlined in the CCMF.
 8. For all returns, the 'other' category was removed in an earlier edition, with additional specific categories added, where appropriate.
 9. Amendments and updates to the guidance have been made having regard to issues raised by courts through correspondence or as a direct result of compliance visits undertaken
 10. The new form can be printed onto two sides of one sheet to allow for carbon copies of the first page to be made. Please continue with local printing/copying arrangements.

11. Lord Justice Thomas, as the then Senior Presiding Judge, issued specific advice in August 2005 which still applies, and is attached at **Annex B**. This advice was provided in response to questions raised by courts at compliance visits and via e-mail at that time.

Definitions

12. The following definitions are used throughout this scheme and should be applied as the guiding principles:

Trial – A hearing at which the prosecution produces evidence to prove the case against the defendant. A trial includes a trial of issues ancillary to sentence such as Newton Hearings and Special Reasons Hearings. For the avoidance of doubt this would include all proceedings for the enforcement of community penalties and anti-social behaviour orders. Newton Hearings in the **Crown Court** are to be recorded in the appropriate field on CREST. [see annex A for relevant extracts of *Criminal Case Management*]

Cracked Trial - on the trial date, the defendant offers acceptable pleas or the prosecution offers no evidence. A cracked trial requires no further trial time, but as a consequence the time allocated has been wasted, and witnesses have been unnecessarily inconvenienced thus impacting confidence in the system.

Ineffective Trial - on the trial date, the trial does not go ahead due to action or inaction by one or more of the prosecution, the defence or the court and a further listing for trial is required.

Vacated Trial - A vacated trial is a trial that has been given a date for trial whether at a preliminary hearing or Plea and Case Management Hearing (PCMH) or by inclusion in a window for trial, and is taken out of the list (*stood out of the list*) **before** the date of trial. **Prior to the date set for trial**, the Prosecution, the Defence or the Court makes an application to vacate the trial. The application is accepted and approved on behalf of the court (Bench/Judge) and the trial is taken out of the list. All parties are notified and witnesses and defendants are de-warned. The listing officer then records the reason for vacation on the vacated trial monitoring form. A further listing for the vacated trial may be required and the court time made available may or may not be used to hear another case.

As each case will be given a trial date at the 1st hearing or shortly after, any subsequent adjournment of the trial date results in a vacated trial and must be recorded as such, including early guilty pleas and discontinuance.

In the Crown Court, all listed trials, whether in the warned, firm or daily lists are to be recorded in the vacated return, as are those with a fixed date where the relevant lists have not yet been published. Floating trials which are listed but not called-on for trial should not be counted in the vacated trial return.

Where the court is notified prior to the date of trial that the trial will not go ahead, but nonetheless, the case is left in the list e.g. For Mention, for the Presiding Chair of the Bench / Judge to vacate on the trial day then this should be recorded as a vacated trial as it is vacated effectively prior to the date fixed for trial.

Where, at a preliminary hearing, a Crown Court fixes both the date for a PCMH and the trial date, the trial date is in effect conditional on the outcome of the PCMH. Therefore if the defendant enters a guilty plea at the PCMH, you do not need to record it as a vacated trial.

The effective, ineffective and cracked trial monitoring form (CITM 3.0) is attached at Annex C.

13. A trial excludes a Plea and Case Management Hearing (PCMH) and 1st Hearings.
14. **All CPS and non-CPS prosecuted trials are to be counted.** Space is provided on the form to ensure that the Prosecutor details are recorded.
15. With regard to breach proceedings; only contested community penalty and breach proceedings are to be counted
16. Monitoring of cracked, ineffective and vacated trials should relate to cases listed for trial, not individual defendants.
17. **Crown Court** - you will be aware that since the judgement in R v Goodyear (Karl) [2005] EWCA Crim 888, judges in the Crown Court have four options regarding an advanced indication of sentence:
 - i) To indicate that the sentence, or type of sentence, would be the same for a defendant regardless of whether s/he pleaded guilty or the matter went to trial;
 - ii) On request from the defence, to give an indication of the maximum sentence to be passed were a guilty plea to be tendered at that stage;
 - iii) To remind the defence of their right to seek such an indication;
 - iv) To refuse to give any advanced indication of sentence of sentence or to postpone such decision.

If an indication is given in the circumstances set out in point 2, and the defendant pleads guilty, we would ask you to record this in the 'cracked' trial form. Paragraph 73 of the judgement says that an indication would normally be sought at the plea and case management hearing but does not rule out that this will happen at a later stage or at the trial itself.

This procedure does **NOT** apply to Magistrates' Courts.

Specific guidance regarding Trials Proceeding in Absence

18. If the trial proceeds in absence, then the appropriate box should be ticked on the CITM 3.0 form. It is important that cases proceed in the absence of the defendant wherever possible, but especially when a witness is involved. Specific guidance is:
 - (i) If the defendant fails to appear in a case listed for trial following a not-guilty plea, and on the day the case proceeds in his absence, then this should be counted as a trial; and
 - (ii) If the defendant fails to appear on the date of the trial but then another reason prevented the court from proceeding in absence (e.g. witnesses

failing to attend) then the latter reason must be recorded as the main reason for the ineffective trial.

[see annex A for relevant extracts of Criminal Case Management Framework]

- (iii) If the Bench had been ready to go ahead and prosecution was not ready to proceed, (and the defendant was not present), the reason would therefore be a prosecution reason as opposed to defendant absence.

If the trial Proceeded-in-Absence of the defendant was effective, the corresponding box on the Effective, Cracked and Ineffective Trial Monitoring Form is to be completed.

Trials proceeding under Proof in Absence criteria (Magistrates' Courts)

19. Notwithstanding the definition of "trial" in paragraph 12, certain matters placed before the court for final determination should not be counted for the purposes of this guidance. This will arise in the following circumstances:
- i) The defendant fails to enter a plea and does not attend in answer to a summons in a case triable summarily only;
 - ii) The prosecution has served its evidence in compliance with Section 9 of the Criminal Justice Act 1967;
 - iii) The court is satisfied that the defendant is aware of the hearing and has not required live evidence to be called nor advised the court of any difficulties in attending; and
 - iv) The court hears the case in absence without formally fixing a "trial" date

The Process

20. The scheme relies on the collection of agreed information about the reason for the wasted hearing at the time the trial cracks, becomes ineffective or the point at which the trial is vacated.
21. The completion of the monitoring form is initiated in court when (i) it is apparent that the trial cannot proceed; or (ii) when the trial is successfully completed (see para. 26). The court will enquire into the reasons and record the **primary** reason for trial failure on the form. It will follow enquiry held by the bench to establish cause at which prosecution and defence will submit reasons. Parties should aim to agree a main reason to aid the decision of bench. Once the main reason has been endorsed / decided by the presiding Chair of the Bench / Judge, this should be recorded before parties leave the court. Secondary issues should be mentioned in comment box. Where more than one reason is identified or there are different reasons for different defendants, the presiding Chair of the Bench / Judge should decide the primary reason in court, and any comments provided by all parties are to be written in the comments box. A single lead reason must be identified for the computer systems.
22. The main reason for the failure of the trial to proceed as planned should be recorded before the parties leave the court on the direction of the presiding Chair of the Bench / Judge. **The parties should agree a main reason for the trial not proceeding as planned, to aid the decision by the presiding Chair of the Bench / Judge. The Bench must ensure that all parties complete their section of the form and provide a signature.**

23. Where more than one reason is identified, or there are different reasons for different defendants, **the presiding chair of the Bench / Judge should determine the dominant cause, as for statistical purposes only one reason can be recorded. However, if there are other causes, these must be recorded in the comments box.**
24. It is essential that all parties sign the form and enter comments as appropriate. The name of the Defence solicitors company must be entered under the advocates signature in the relevant box
25. The Court Clerk/Legal Advisor must ensure that all relevant 'tick boxes' are completed as well as the case information and timeliness data.
26. **It is necessary for a form to be completed when a trial is effective** so that analysis can be completed in relation to such matters as effective trials that proceeded in absence or where a sentence indicator was provided. It is not necessary to require the prosecution or defence to sign this form
27. Copies of the forms will be provided to signatories' for future reference. The court will retain the original for future analysis (see paragraph 30).
28. The court will collate these forms using the facilities provided on the OPT (one performance truth) system.
29. The vacated trials log/forms (form VTM2.0 attached at **Annex D**) will be compiled and maintained by the court office and agreed by other parties involved either at the time of completion or on a weekly / monthly basis. The data will be entered by the court office onto the OPT spreadsheet and onto CREST as explained in the accompanying CREST Guidance (attached at **Annex E**). This form must be signed by the listing officer.

[see annex A for relevant extracts of Criminal Case Management]

Performance Analysis

30. All data returns should be monitored locally on a regular basis by the court, CPS, police, LCJB Performance Officers and the Legal Services Commission (LSC), so that CJS staff can work together to resolve any problems with a view to:
 - (i) increasing the proportion of effective trials, including cracked trials with an effective outcome (i.e. cracked reasons A to F); and
 - (ii) monitoring and decreasing the number of 1st hearings and the time to bring a case to trial.If there is a sudden drop in performance in any month then this data should be carefully checked before it is submitted to the HMCS Performance Directorate or entered on the appropriate computer system. The Performance Directorate will monitor all monthly data and query those that appear to warrant further investigation.
31. Examples of best practice which are undertaken in some areas regarding effective, cracked, ineffective and vacated trials are outlined below:
 - i) In Area A, Trial Readiness Assessment Meetings are held twice weekly. These are used to review each case that has been listed for trial in the coming three weeks to ensure that there are no difficulties with the trial

proceeding on time. Monthly inter-agency meetings are also held where each ineffective trial is reviewed and analysed.

- ii) In Area B, meetings are held between project teams, area co-ordinators and colleagues from across the CJS. This is an opportunity to identify areas of good practice and to share them with others. The area is also making use of Citizens' Panels; asking the public their opinions on appropriate standards of care for victims and witnesses and how they would like the Witness Care Units to operate.
 - iii) In Area C, case progression officers are working in partnership with cross agency colleagues to prevent cases becoming ineffective prior to the event. In conjunction with this, the local delivery board has allowed the area to review their targets and tackle poor performance more effectively. The Board identifies and examines the reasons behind ineffective and cracked trials and takes any remedial action.
32. The forms provide detail on reasons for trials not being effective. These should be analysed to identify particular problem areas and trends.
33. Data from the forms should be routinely entered by the magistrates' court / Crown Court staff onto their computer systems. A request has been made for the form to be a standard output from Libra.
34. Magistrates' court staff should **ensure that the data is input onto the OPT system ('One Performance Truth') no later than the 10th working day of the following month.**
35. Crown Court staff should ensure that data is entered onto CREST no later than two working days after the end of the month.
36. Copies of the individual case monitoring forms and any summary report should then be provided by local magistrates' court / Crown Court staff to the local CPS, police, the LCJB performance officer and the Regional Criminal Defence Service manager's of the LSC, to enable managers to investigate trends in cracked, ineffective vacated and effective trials. A short narrative should be attached where trends become apparent, dealing with possible reasons for these trends, and any other unusual performance issues, which may have been identified.
37. The data is currently published (and can be viewed):
- on the OPT system reports (immediately it is verified);
 - at http://libra-infonet.lcd.gsi.gov.uk/court_statistics/index.htm monthly;
 - on CJS on-line on <http://lcjb.cjsonline.gov.uk/ncjb/29.html> quarterly

PSA 1 Ineffective Trial Target

38. LCJBs have targets under SR04's PSA 1 that are set locally to reduce the level of ineffective trials in their area.

- The Magistrates' Courts national target under SR2004 is to reduce the ineffective trials rate to 19% by March 2008.
 - The Crown Court national target under SR2004 is to reduce ineffective trials rate to 14% by March 2008.
39. Performance against the target is measured from data from the final quarter of each financial year (January to March).
40. Inevitably, analysis of the forms will not in itself deliver better administration of justice, it is expected that there will be local co-operation to this end. **To ensure the effective administration of justice, either the Court Manager, the Justices' Clerk or a senior legal adviser, must carry out thorough monthly analysis. In addition, to examining the statistics there is a need to undertake an examination of the underlying facts of any problem and to address them as applicable. In the Crown Court, this analysis should be applied to each case, the Magistrates' Court should also attempt to analyse all cases in this way at each court. The analysis must be provided to the Resident Judge of the Crown Court and to the Bench Chair and the designated District Judge (Magistrates') Courts at each Magistrates' Court (x-ref LCJ's Listing Guidance issued July 2005 & in s.16 Crown Court Manual).**
41. **As part of ongoing Best Practice the discussion regarding the analysis of the forms is to include the CPS, Police and other agencies that are involved in the trials covered, including the defence and the Legal Service Commission. This must form part of the interagency performance management arrangements within the CJS area and should feed into the quarterly LCJB self-assessments.**

[Annex A has relevant extracts of Criminal Case Management]

EFFECTIVE, CRACKED, INEFFECTIVE AND VACATED TRIALS IN THE CROWN COURT AND THE MAGISTRATES' COURTS

OPERATIONAL GUIDANCE FOR COMPLETION OF THE TRIAL MONITORING FORM

Introduction

This guidance note is issued in order to ensure that data recording is carried out in a uniform manner across the 24 HMCS criminal Areas and the existing 42 LCJB Areas.

Definitions

Trial – A hearing at which the prosecution produces evidence to prove the case against the defendant. A trial includes a trial of issues ancillary to sentence such as Newton Hearings and Special Reasons Hearings. For the avoidance of doubt this would include all proceedings for the enforcement of community penalties and anti-social behaviour orders. Newton Hearings in the **Crown Court** are to be recorded in the appropriate field on CREST.

A trial excludes a Pre Trial Review (PTR), a Plea and Case Management Hearing (PCMH) and 1st Hearings. **CPS and non-CPS prosecuted trials are to be counted.**

Cracked Trial - On the trial date, the defendant offers acceptable pleas or the prosecution offers no evidence. A cracked trial requires no further trial time, but as a consequence the time allocated has been wasted, and witnesses have been unnecessarily inconvenienced thus impacting confidence in the system.

Ineffective Trial - On the trial date the trial does not go ahead due to action or inaction by one or more of the prosecution, the defence or the court and a further listing for trial is required.

Vacated Trial - A vacated trial is a trial that has been given a date for trial whether at a preliminary hearing or Plea and Case Management Hearing (PCMH) or by inclusion in a window for trial, and is taken out of the list **before** the date of trial. Prior to the date set for trial, the Prosecution, the Defence or the Court makes an application to vacate the trial. The application is accepted and approved on behalf of the court (Bench/Judge) and the trial is taken out of the list. All parties are notified and witnesses and defendants are de-warned. The listing officer then records the reason for vacation on the vacated trial monitoring form. A further listing for the vacated trial may be required and the court time made available may or may not be used to hear another case.

As each case will be given a trial date at the 1st hearing or shortly after, any subsequent adjournment of the trial date results in a vacated trial and must be recorded as such, including early guilty pleas and discontinuance.

In the Crown Court all listed trials, whether in the warned, firm or daily lists are to be recorded in the vacated return, as are those with a fixed date where the relevant lists have not yet been published. Floating trials which are listed but not called-on for trial should not be counted in the vacated trial return.

Trials vacated before trial date but left in List : Where the court is notified prior to the date of trial that the trial will not go ahead, but nonetheless, the case is left in the list e.g. For Mention, for the Presiding Chair of the Bench / Judge to vacate on the trial day then this should be recorded as a vacated trial as it is vacated prior to the date fixed for trial

Where, at a preliminary hearing, a Crown Court fixes both the date for a PCMH and the trial date, the trial date is in effect conditional on the outcome of the PCMH. Therefore if the defendant enters a guilty plea at the PCMH, you do not need to record it as a vacated trial.

CJSSS cases (relating to magistrates' courts only)

A CJSSS case is one where it is:

- a CPS / Police prosecution
- of an adult case
- commenced by way of charge; plus
- any other cases as agreed in an area's local scheme

The monitoring form will be completed in court by the legal adviser on direction of presiding Chair of the Bench / Judge. It will follow an enquiry held by the presiding Chair of the Bench / Judge to establish cause at which the prosecution and defence will submit reasons. Parties should aim to agree a **main** reason to aid the decision of presiding Chair of the Bench / Judge. Once the main reason is endorsed/decided by the presiding Chair of the Bench / Judge, this should be recorded before parties leave the court. Secondary issues should be mentioned in the comment box. Where more than one reason is identified or there are different reasons for different defendants, the presiding Chair of the Bench / Judge should decide the **primary** reason in court, any comments provided by all parties are to be written in the comment box. A single lead reason must be identified for computer system

Paragraph 5.8(b) of CCMF Magistrates Court third edition and paragraph 24.12(b) of CCMF Crown Court second edition refers

Only one form should be used per trial, if there are multiple defendants and the information cannot be entered on one sheet, the sheets relating to the trial must be stapled together to avoid the trial being given a multiple entry on the court's computer system.

IMPORTANT:

- **A form must be completed when a trial is effective**
- **The Unnecessary Witness Attendance box must be completed regardless of whether the trial is effective, cracked or ineffective**
- **If the trial Proceeded-in-Absence of the defendant and was therefore effective, the corresponding box on the Effective, Cracked and Ineffective Trial Monitoring Form must be completed**
- **Bench Warrant issued – Yes / No - Please indicate on the form if a Bench Warrant was issued**

Section 3

Cracked Trials in the Crown Court and the Magistrates' Courts

A brief description follows for each category. **Only one category (from A to L) is to be selected** and it must be *the primary reason*.

- A: Acceptable guilty plea(s) entered late to some or all charges / counts on the charge sheet, offered for the first time by the defence** - On the date of trial the defendant, for the first time, enters a guilty plea which the prosecution accepts.
- B: Acceptable guilty plea(s) entered late to some or all charges / counts on the charge sheet, previously rejected by the prosecution** - On the date of trial the prosecution accepts a conditional plea having previously rejected the offer from the defence.
- C: Acceptable guilty plea(s) to alternative new charge (not previously on the charge sheet), first time offered by the defence** - On the date of trial the defence agrees to offer a guilty plea to a new or amended charge, which the prosecution accepts.
- D: Acceptable guilty plea(s) to alternative new charge (not previously on the charge sheet), previously rejected by the prosecution** - On the date of trial the prosecution prefers an alternative charge which the defendant is willing to plead to.
- E: Defendant bound over – acceptable to prosecution, offered for the first time by the defence** - On the date of trial the defence offers/agrees to accept a bind-over, the prosecution concurs.
- F: Defendant bound over – now acceptable to the prosecution, previously rejected by the prosecution** - On the date of trial the prosecution agrees to the defendant being bound-over having previously rejected the offer.
- G: Unable to proceed with trial because defendant incapable through alcohol/drugs**- On the date of trial the defendant is found to be in no fit state to proceed with the trial (and no further trial date is set)
- H: Defendant deceased** - the defendant has died.
- I: Prosecution offers no evidence – insufficient evidence** – On the date of the trial the prosecution offers no evidence because of insufficient evidence.
- J: Prosecution offers no evidence – witness absent / withdrawn** – On the date of trial the prosecution offers no evidence because of witness unavailability.
- K: Prosecution offers no evidence: public interest grounds**
- L: Prosecution offers no evidence: adjournment refused**

Section 4

Ineffective Trials in the Crown Court and the Magistrates' Courts

A brief description follows (where necessary), for each category that a trial may be 'ineffective' – **only one category (from M1 to Z) is to be selected** and it should cover **the primary reason** that has caused the trial to become ineffective (i.e. not completed on the set date and was therefore adjourned).

Note: Defendant absent – *did not proceed in absence (judicial discretion)* (Reason S1): this reason should **not** be used if the court was prepared to proceed in the defendant's absence but then another reason prevented them from doing so. The latter reason must be recorded as the main reason for the ineffective trial.

M1: Prosecution not ready – served late notice of additional evidence on defence – The trial could not go ahead because the prosecution did not provide timely service of additional evidence. Please record the name of the prosecutor in the comments box.

M2: Prosecution not ready – specify in comments - On the date of trial the prosecution could not proceed, as their case was not trial-ready. The name of the prosecutor and the specific reason that the prosecution failed to be trial-ready should be entered in the comments and not relate to any other reason in M to P, for discussion at local management meetings.

M3: Prosecution failed to disclose unused material – This covers failing to comply with their statutory duties in a timely manner, including failing to review unused material or a defence statement, or making late disclosure of unused material that either undermined the prosecution case or assisted the defence case. Please record the name of the prosecutor in the comments box.

N1: Prosecution witness absent - police - Police witnesses failed to attend on the date set for trial. Please record the name of the officer(s) who failed to attend in the comments, as this will assist the police and CPS when they review the returns.

N2: Prosecution witness absent – professional / expert - Key professional / expert witness(es) failed to attend on the date set for trial. Please record the name of the witness in the comments box.

N3: Prosecution witness absent - other - One or more civilian witnesses failed to attend on the date set for trial. If the reason for non-attendance is known, please record this in the comments box for discussion at local management meetings.

O1: Prosecution advocate engaged in another trial – advocate unexpectedly over-running in another courtroom. Please record the name of the prosecutor in the comments box.

O2: Prosecution advocate failed to attend – advocate fails to attend. Please record the name of the prosecutor and the reason for absence in the comment box.

- P: Prosecution increased time estimate – *insufficient time for trial to start* –**
The trial cannot start because the prosecution has increased the time needed in the estimate. In the comments box please state why the trial could not start.
- Q1: Defence not ready – *disclosure problems* –** The trial could not go ahead because of the late service of the defence statement, service of an inadequate defence statement or late notification of details of an alibi witness, which did not provide the prosecution sufficient time to investigate and the making of a late Section 8 application.
- Q2: Defence not ready – *specify in comments box (inc. no instructions)* -** The defence was not ready to proceed on the date of trial - here the reason should be entered in the comments box for discussion at local management meetings.
- Q3: Defence asked for additional prosecution witness to attend –** Defence make a late request for the attendance of a prosecution witness not previously warned.
- R: Defence witness absent -** One or more defence witnesses failed to attend on the date set for trial. Please use the comments box to explain the reason the court gave as to why it did not proceed.
- S1: Defendant absent – *did not proceed in absence (judicial discretion)* -**
Please set out reason court gave for not proceeding in absence.
- S2: Defendant ill or otherwise unfit to proceed –** It is important to find out when the illness started and note the date in the comments box.
- S3: Defendant not produced by Prison Escort Custody Service -** The defendant who was in custody, was not produced in time for the trial to go ahead – Please use the comments box if the defendant was delivered late or to another court on a different charge.
- S4: Defendant absent – unable to proceed as not notified of place and time of hearing.** Please give a clear description of how this situation arose in the comment box
- T: Defence increase time estimate – *insufficient time for trial to start.*** The trial cannot start because the defence has increased the time needed in the estimate. In the comments box please state why the trial could not start.
- U1: Defence advocate engaged in another trial – advocate unexpectedly over-running in another courtroom**
- U2: Defence advocate failed to attend – advocate fails to attend**
- V: Defendant dismissed advocate**
- W1: Another case over-ran –** If the trial could not go ahead because an earlier trial over-ran, then please note this in the comments box for discussion at local management meetings.
- W2: Judge / Magistrate availability due to illness etc –** There was a lack of magistrate / Judge availability due to magistrates / Judge being disqualified

from sitting on the case in question, illness or otherwise absent from court because of illness or other cause.

W3: Case not reached / insufficient cases drop out / Floater not reached – The case could not be heard for trial because it was a floating / backer / reserve case and was not reached because other cases did not drop out of the list.

W4: Equipment /Accommodation failure

W5: No interpreter available – to include incorrect language or dialect interpreter, or the interpreter is not on the approved list as per the national guidelines. Please note this in the Comments box for discussion at local management meetings.

The following reasons are available to the Crown Court only

X: Insufficient jurors available

Y: Outstanding cases/committals in a magistrates' court

Z: Outstanding cases/committals in other Crown Court centre

Vacated Trials in the Magistrates' Courts

Crown Court - Please see the separate guidance notes for details on recording vacated trials on CREST

A separate form (VTM 2.0) records vacated trials. It should be completed and submitted to the performance officer by the listing office. The form must show all notifications of vacation *received within that month* and details of the reasons for vacation. (The entry should not be in the month that the original trial was set).

Only one category (from A to P) is to be used and it should indicate *the primary reason* that has caused the trial to be vacated.

- A: Prosecution end case – Prosecution discontinue case prior to trial date**
- B: Prosecution not ready – Prosecution not ready for trial, further preparation needed**
- C: Prosecution witness absent – Prosecution witness not able to attend trial: police witness**
- D: Prosecution witness absent – Prosecution witness not able to attend trial: other witness**
- E: Defendant absent – Defendant ill / deceased / unable to attend**
- F: Defence not ready – further preparation needed**
- G: Defence witness absent – Defence witness not able to attend trial**
- H: Right to representation problems – Defendant dismissed legal representation**
- I: Lack of court time – Prosecution request increased time estimate**
- J: Lack of court time – Defence request increased time estimate**
- K: Lack of court time – Court vacates trial due to anticipated lack of court time**
- L: Defendant changed plea to guilty: original charge**
- M: Defendant changed plea to guilty: alternative charge**
- N: Defendant bound over at PTR**
- O: Guilty plea with exceptional hardship pleaded**
- P: Accommodation / Equipment failure**

Magistrates' Courts and Crown Court Frequently Asked Questions

Q: What happens when there is no agreement from the prosecution and the defence as to the reason for failure?

A: Having conducted an inquiry the Presiding Chair of the Bench / Judge Chair/Judge will make a decision on the primary reason for trial failure, this reason will be recorded on the form. Secondary reasons should be mentioned in the Comments box.

CCMF Magistrates Court third edition

Prosecution Advocate 5.3 (g) *If the hearing is ineffective, complete the form recording the reason for this and place the form before the magistrates for their consideration before leaving the court*

Defence Advocate 5.6 (g) *If the hearing is ineffective, complete the form recording the reason for this and place the form before the magistrates for their consideration before leaving the court*

CCMF Crown Court second edition

Prosecution Advocate 24.10(e) *If the hearing is ineffective, complete the form recording the reason for this and place the form before the judge for his or her consideration before leaving the court*

Defence Advocate 24.11(c) *If the hearing is ineffective, complete the form recording the reason for this and place the form before the judge for his or her consideration before leaving the court]*

Q: How are pre-trial guilty pleas categorised?

A: If *prior to the date of trial* the defendant pleads guilty or by agreement with the prosecution pleads to another acceptable charge or accepts a bind-over – then the case is vacated, as a full trial should be put in the space that has now been cleared.

Q: Do non-CPS trials need to be recorded?

A: Yes, all criminal trials should be recorded. Locally these cases could be filed separately from the CPS cases so that when feedback is given to local police and CPS, it only includes the relevant information for these agencies.

Q: What if forms are presented with 2 or more categories circled?

A: The form should only list the **main** reason for failure of the trial and the comments box used to explain any secondary reasons that caused the trial to become ineffective.

Q: If the reason for trial failure is not listed as a category option, how is it recorded?

A: When the trial fails for a reason that is not listed on the form, the Judge or Bench Chair should hold an inquiry to discover the underlying cause. This should enable one of the existing categories to be picked. The most suitable category must be indicated, with further explanation recorded in the comments section if necessary.

Q: How is a part heard trial recorded?

A: In the Crown Court the case should be recorded as an effective trial once the jury has been sworn in. No change is currently being made to the definition of a Crown Court trial or the way in which it is counted.

In the Magistrates' Courts the trial monitoring form should usually be completed only at the end of the trial so that if the trial became ineffective at the subsequent hearing of the part heard case it would be counted as ineffective. By counting

the case at the end it stops the trial being counted more than once or being counted as effective on day one whilst becoming ineffective on day two.

Q: In the Crown Court - a legal argument takes place after all parties attend, however the jury has not been sworn in. In our example the legal argument continues until the third day at which point the jury is sworn. How is this to be counted?

A Thomas LJ advised that this situation should be counted as one effective trial.

Q: A particular issue related to the use of the PPO box on the form, i.e. the allegation that the defendant may be a PPO and that it is not in the interest of justice for the Bench to be aware of this information.

A: It is advised that this information could be utilised if the trial were to crack. Alternatively, this section of the form need not be completed until all parties have signed.

Q: A query was raised regarding the Goodyear judgement i.e. that if a defendant has a Goodyear indication at the PCMH and as a result pleads guilty that this should be treated as ineffective and not cracked

A: The case should be treated as cracked. It is important to note that information on sentence indicators is to be collected.

Q: What is CJSSS (Criminal justice simple, speedy, summary review)

A: CJSSS is being undertaken jointly by MoJ, OCJR and CPS and seeks to identify ways to achieve a speedier, simpler criminal justice system (CJS). Another objective is to identify ways to make greater use of summary justice to ensure that cases are disposed of in a more proportionate way. The recommendations made within the review will go some way towards improving confidence in the CJS, increasing victim and witness satisfaction, making better use of resources, enabling CJS to engage more effectively with communities and providing better opportunities for changing the behaviour of offenders.

Q: Which is the “Date of Offence” or “Date of Charge”?

A: If the offence occurred between two dates, use the later date.

If the offence is a breach of a Community Order, then it must be the date of the “unacceptable failure to comply” which is for the probation service to identify.

If there are co-defendants charged on different days, use the later date.

Q: What is defined as a 1st hearing?

A: A first hearing is the first time a case is listed in court where ordinarily a plea would be entered or directions given for the case to be progressed but it does not include bail applications, mentions or restraint applications.

If you have any further questions please contact

Data: Nick Rose (020 7210 0390; nicholas.rose@hmcourts-service.gsi.gov.uk)

Policy: Martin King (020 7210 0476; King.Martin@hmcourts-service.gsi.gov.uk)

Supporting Extracts from the Criminal Case Management Framework Magistrates Courts (third edition issued July 2007) and Crown Court (second edition issued July 2005)

Magistrates' Courts – third edition CCMF

Chapter 5 - Trial, Newton hearing and sentence

Objectives

- (a) To achieve the overriding objective of dealing with the case justly*
- (b) To ensure that the hearing is effective and proceeds without delay on the day when it is listed*
- (c) To ensure that the case is dealt with efficiently, expeditiously and proportionately with the live evidence being confined to the real, disputed issue(s)*

Magistrates' Courts

The Court Administration

5.8 The Court administration should:-

(b) If the hearing is cracked/ineffective, ensure that the 'Cracked and Ineffective Trial Monitoring Form' is completed by the advocates, recording the reasons for the crack/ineffectiveness. The form should be placed before the court for approval before the advocates leave the court.

Magistrates' Court

Responsibilities

5.3 CCMF

Prosecution Advocate

In addition to preparing and conducting the case in compliance with the Rules and the guidance in the 'actions' above, the prosecution advocate should:-

- (a) Consider making an application to proceed in absence if the defendant does not attend*
- (b) Check that prosecution witnesses are present when required and meet them to answer any questions they may have about court procedures and to give an indication, where possible, of how long they will have to wait before giving evidence*
- (c) Where a witness has not attended, consider making an application for the issue of a summons. The advocate must be in a position to inform the court of the history of contact with the witness*
- (d) Endorse the prosecution file with details of the outcome, any directions made and record the next date of hearing or sentence*
- (e) Ensure that any requests or actions are brought to the attention of the prosecution team for action*
- (f) Where a pre-sentence report is requested, in the event of conviction, ensure the PSR pack is given to the Probation Service officer at court on the same day to enable preparation of reports where practicable*
- (g) If the hearing is cracked or ineffective, complete the Cracked and Ineffective Trial Monitoring Form recording the reason for this and place the form before the court for consideration before leaving the court*
- (h) Keep the witnesses informed of the progress of the case and apply to the court for their release as soon as practicable if the trial is 'cracked' or ineffective.*

If the trial 'cracks', the witnesses should remain at the court if there might be a Newton hearing. If the trial is ineffective, the witnesses should be asked to remain at court while a new date is fixed

5.6 CCMF

Defence Advocate

In addition to preparing and conducting the case in compliance with the Rules and the guidance in the 'actions' above the defence advocate should:-

- (a) If the defendant fails to attend, consider whether his professional duty is to remain and to represent the defendant during the course of any trial in absence*
- (b) Check that defence witnesses are present when required and meet them*
- (c) Where a witness has not attended, consider making an application for the issue of a summons. The advocate must be in a position to inform the court of the history of contact with the witness*
- (d) Be ready to present plea in mitigation if the defendant is convicted or enters a late plea of guilty*
- (e) Endorse the defence file with details of the outcome, any directions made and record the next date of hearing or sentence*
- (f) Ensure that any requests or actions are brought to the attention of the defence team for action*
- (g) If the hearing is cracked or ineffective, complete the form recording the reason for this and place the form before the court for consideration before leaving the court*
- (h) Be prepared to make a quantified and supported application for a defendant's costs order in a specific sum if the defendant is acquitted*

Crown Court – CCMF second edition issued July 2005

Part 13 Trial of issues ancillary to sentence (such as Newton hearings)

A hearing to determine issues ancillary to sentence

Objectives

- 13.1 (a) To ensure that hearings will be effective and proceed when and where listed*
- (b) To avoid unnecessary hearings by being prepared for sentencing on the same day where appropriate*
- (c) The parties to arrange the attendance of witnesses so as to present evidence clearly and in a helpful order, making full use of court time and avoiding unnecessary waiting*
- (d) To provide victims, and witnesses for the prosecution and defence with support*

Crown Court

The Court

13.5 The Criminal Procedure Rules 2005 provide that at every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that. At every hearing the court must, where relevant:

- (a) If the defendant is absent, decide whether to proceed nonetheless*

Crown Court

Case Progression Roles and Responsibilities

13.8 Prosecution Advocate

- (a) If the hearing is ineffective, complete the form recording the reason for this and place the form before the judge for his or her consideration before leaving the court*
- (b) Ensure that any requests or actions are brought to the attention of the prosecution team for action*
- (c) Provide the court with details of up to date antecedents and offences to be taken into consideration, if appropriate*
- (d) If pre-sentence report requested, if so instructed and where practicable, ensure the CPS/PSR pack is given to the probation service officer, at court on the same day to enable preparation of reports*

13.9 Defence Advocate

- (a) Confirm to the court if required that in the event of non-attendance, the defendant had been made aware of the hearing date and the consequences of non-attendance*
- (b) If the hearing is ineffective, complete the form recording the reason for this and place the form before the judge for his or her consideration before leaving the court*
- (c) Confirm to the court, if required that the defendant has been advised of the importance of attending probation appointments where a pre-sentence report requested*
- (d) Ensure that any requests or actions are brought to the attention of the defence representative for action*

Crown Court

Part 24 Trial

A hearing at which a jury (or a judge alone in appropriate cases) determines the outcome of the defendant's case

Objectives

- 24.1** *(a) To ensure that trials are effective and proceed when listed*
- (b) The parties to arrange the attendance of witnesses so as to present evidence clearly and in a helpful order, making full use of court time and avoiding unnecessary waiting*
 - (c) To ensure that victims and witnesses for the prosecution and defence are given appropriate support*

Crown Court Pages

Case Progression Roles and Responsibilities

24.10 Prosecution Advocate

- (a) Introduce himself or herself to prosecution witnesses and ensure that all witnesses are present*
- (b) Where witness(es) do not attend consider using the victim personal statement where available in support of an application for a witness summons or for an application to admit a written statement as evidence of any fact in the absence of direct oral evidence*
- (c) Ensure that any requests or actions are brought to the attention of the prosecution team for action*
- (d) In the event of conviction, if pre-sentence report requested, if so instructed and where practicable, ensure the CPS/PSR pack is given to the probation service officer, at court on the same day to enable preparation of reports*

(e) If the hearing is ineffective, complete the form recording the reason for this and place the form before the judge for his or her consideration before leaving the court

24.11 Defence Advocate

(a) Introduce himself or herself to defendant and defence witnesses and ensure that all witnesses are present

(b) Confirm to the court if required that in the event of non-attendance, the defendant had been made aware of the hearing date and the consequences of non-attendance

(c) If the hearing is ineffective, complete the form recording the reason for this and place the form before the judge for his or her consideration before leaving the court

(d) Ensure that any requests or actions are brought to the attention of the defence representative for action



The Rt. Hon. Lord Justice Thomas
Senior Presiding Judge for England and Wales

Royal Courts of Justice
 Strand
 London WC2A 2LL

020 7947 7332 (Secretary)
 E: LordJustice.Thomas@courtservice.gsi.gov.uk
 E: Clerk.ThomasLJ@courtservice.gsi.gov.uk
 E: (Secretary): jennifer.oldroyd@courtservice.gsi.gov.uk

August 2005

**To Presiding Judges, Resident Judges, Chairmen of Area Judicial Fora,
 Chairmen of Benches, the Senior District Judge (Magistrates' Courts) and
 Justices' Clerks**

Effective, Cracked, Ineffective and Vacated Trial Monitoring Scheme

This is the third and last of the letters which I am writing at this time in connection with improving the administration of justice. This one deals with the monitoring of ineffective, cracked and vacated trials, and is written because HMCS is revising the form.

The present position

In the course of last year I wrote to you about the monitoring the reasons for ineffective, cracked and vacated trials. I am very grateful to you for having done so much to ensure that it is the judge or the chairman presiding who:

- Conducts a searching inquisition in open court into the reasons why a trial is ineffective or, if the defendant pleads guilty only at the time the trial should have started, why this might not have happened earlier. Advocates should expect this enquiry (see paragraphs 24.7(b) and 17.7(b) of the Criminal Case Management Framework).
- Sees that the reasons are recorded on the form in sufficient detail so as to identify, particularly in the case of ineffective trials, whether the cause is attributable to a one-off problem, whether it was avoidable, or whether the reason indicates a systemic problem.
- Signs the form after it has been signed by the advocates.

The completion of the form after inquiry in open court has been found to have four principal benefits:

- It makes open to public scrutiny the reasons why a trial has not proceeded.
- Knowledge of the likely exposure to public scrutiny of any inefficiency (which has brought about the failure of a trial to proceed) helps ensure that every step is taken to prevent that inefficiency re-occurring.
- It makes it certain that the reasons are accurately recorded. The signature of the judge or the presiding chairman means the reasons given in court are not open to subsequent challenge by anyone who may be responsible for any failure or deficiency.

- The information provided has helped reduce the incidence of ineffective trials through the monthly analysis to which I will refer.

May I thank you all very much for bringing this about.

There are, however, some courts where the reasons are not completed as fully as they should be or where the form is not being signed by the judge or presiding chairman. I would therefore be grateful if you would remind judges and presiding chairmen that it is important that they make the requisite enquiry and ensure that the reasons are recorded on the form, which should then be signed by them.

The revised form

With the merger of the administration of the Crown and Magistrates' Court through HMCS, it is appropriate to collect information, so far as is possible, in the same format. The form will therefore be different, but most of it will be very familiar. Nothing changes in the procedure to be followed.

There is a new section for trials in absence. The provisions of the Consolidated Practice Direction relating to failure to surrender to bail and trials in absence highlight the importance of courts giving serious consideration to proceeding in absence. Reasons for the decision, whether it be to proceed in absence or not to proceed should always be given. The Practice Direction also stresses the importance of dealing as soon as practicable with defendants who fail to surrender to bail, rather than waiting for the trial of the offence in respect of which bail was granted.

There are two important changes for the Crown Court: (1) there is a new section on sentence indications consequent to the decision in *Goodyear*, and (2) there is a new requirement that figures be kept for vacated trials and their causes. Timetables set at or before the PCMH must be followed, and the causes of any vacated trial dates or trial windows have therefore to be very carefully monitored and analysed.

The monthly analysis

It has been found that, at those courts where a detailed monthly analysis of the case is carried out by the Court Manager or under the supervision of the Justices' Clerk, it has been possible to identify systemic problems and other deficiencies and to take steps to remedy them. There will always be casual reasons for ineffective trials, such as an illness on the morning of the trial, but systemic problems, such as deficiencies in the witness warning system or types of case that need particular monitoring, have been clearly identified.

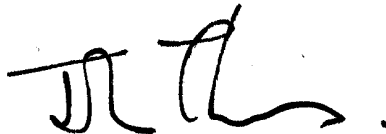
It has been shown that it is not sufficient merely to record the statistics and produce a table showing the numbers in each category. What is required is a thorough examination of the underlying facts of the problem which must then be set out in respect of each case in narrative form as part of the analysis. Without this "drilling down" through such an analysis, the exercise of merely collating the figures is of comparatively little value as a means of improving the administration of justice in the courts. In the Crown Court, this analysis should be applied to each case, but in the Magistrates' Court, the volume of such cases may mean that the analysis can only be undertaken of a proportion of the cases.

Most Resident Judges receive such a customised analysis on a monthly basis; HMCS will ensure that all Resident Judges, all Bench Chairmen and all Justices' Clerks will now receive an analysis for their court. It is then for the Resident Judges or Justices Issues Groups respectively to determine what steps they wish to take as a result of any problems disclosed by the analysis and whether any changes are required at the court or in the practices of the court. Experience in the Crown Court has shown that direct judicial involvement through charring meetings, which explore these problems, achieves the quickest remedy.

It will usually be the practice to send the analysis to the users of the court involved in the trials covered by the analysis (including the defence and Legal Services Commission), and for the Resident Judge or Justices Issues Group (or the Court

Manager in the Crown Court or the Justices' Clerk in the Magistrates' Court on their behalf) to convene periodic meetings of such users at which consideration can be given to what steps might be taken to remedy any problems disclosed.

HMCS will copy this letter to Regional Directors, Area Directors and to Court Managers, and it will form Annex B to the Scheme Guidance.

A handwritten signature in black ink, consisting of stylized initials followed by a period.

Effective, Cracked & Ineffective Trial Monitoring Form CITM 3.0

<input type="checkbox"/> CPS Prosecution: (Tick the box)	<i>(Circle or tick where appropriate)</i>	CJSSS Applies (MC only): <input type="checkbox"/> (Tick the box)
---	---	---

Court:		Local Justice Area:	
Defendant name:		Case Number:	
CPS Area:		URN:	
Enter Prosecutor if not CPS:		Date committed / transferred / sent:	
Police force:		Date of Offence (MC only) :	
Date of Charge/Laying Info (MC only):		Date of 1 st Hearing (MC only) :	
Date of latest Hearing (MC only):		Date of trial:	
Planned Length of Trial: [Nearest 10mins] (MC only)]	Hours Mins	Actual Length of Trial: [Nearest 10mins]:	Hours Mins

Case type	Indictable
Please tick	<input type="checkbox"/> Either way <input type="checkbox"/> Summary (motoring) <input type="checkbox"/> Summary (non-motoring)

Trial outcome	Effective
Please tick	<input type="checkbox"/> Cracked <input type="checkbox"/> Ineffective

No. of PTR/PCMHs held:	
Total no. of Trial hearings:	

Defendant	Youth
Please tick	<input type="checkbox"/> Persistent Young Offender <input type="checkbox"/> Adult <input type="checkbox"/> Prolific / Priority Offender

If effective: proceeded in defendant's absence?	YES
	NO

Was a bench/FTA warrant issued?	YES
	NO

No. of times ineffective before	
Type of Offence Code (MC only) (see overleaf)	

Was a Sentence Indicator provided?	YES
	NO
Guilty plea entered?	YES
	NO

Cracked Trial					
A	B	C	D	E	F
G	H	I	J	K	L

Unnecessary witness attendance (record number in box)
Prosecution witnesses

Prosecution Witnesses	Police	Adult	Child	Expert
Defence witnesses		Adult	Child	Expert

Ineffective Trial					
M1	M2	M3	N1	N2	N3
O1	O2	P	Q1	Q2	Q3
R	S1	S2	S3	S4	T
U1	U2	V	W1	W2	W3
W4	W5	Crown Court Only			
-		X	Y	Z	

Prosecution Comments:

Prosecution advocate (signature): _____

CPS Operational Unit: _____

Defence Comments:

Defence advocate (signature): _____

Defence solicitors: _____

Court's Comments (Court Clerk / Legal Advisor):

Court Clerk / Legal Advisor (signature): _____

Judge's / Bench Chair's Comments:

Judge / Bench Chair (signature): _____

Key: Reasons

Cracked Trials

A	Acceptable guilty plea(s) entered late to some or all charges / counts on the charge sheet, offered for the first time by the defence
B	Acceptable guilty plea(s) entered late to some or all charges / counts on the charge sheet, previously rejected by the prosecution
C	Acceptable guilty plea(s) to alternative new charge (not previously on the charge sheet), first time offered by defence
D	Acceptable guilty plea(s) to alternative new charge (not previously on the charge sheet, previously rejected by the prosecution
E	Defendant bound over, acceptable to prosecution, offered for the first time by the defence
F	Defendant bound over, now acceptable to prosecution - previously rejected by the prosecution
G	Unable to proceed with trial because defendant incapable through alcohol/drugs
H	Defendant deceased
I	Prosecution end case: insufficient evidence
J	Prosecution end case: witness absent / withdrawn
K	Prosecution end case: public interest grounds
L	Prosecution end case: adjournment refused

Ineffective Trials

M1	Prosecution not ready: served late notice of additional evidence on defence
M2	Prosecution not ready: specify in comments
M3	Prosecution failed to disclose unused material
N1	Prosecution witness absent: police
N2	Prosecution witness absent: professional / expert
N3	Prosecution witness absent: other
O1	Prosecution advocate engaged in another trial
O2	Prosecution advocate failed to attend
P	Prosecution increased time estimate - insufficient time for trial to start
Q1	Defence not ready: disclosure problems
Q2	Defence not ready: specify in comments (inc. no instructions)
Q3	Defence asked for additional prosecution witness to attend
R	Defence witness absent
S1	Defendant absent - did not proceed in absence (judicial discretion)
S2	Defendant ill or otherwise unfit to proceed
S3	Defendant not produced by PECS
S4	Defendant absent – unable to proceed as Defendant not notified of place and time of hearing
T	Defence increased time estimate –insufficient time for trial to start
U1	Defence advocate engaged in other trial
U2	Defence advocate failed to attend
V	Defendant dismissed advocate
W1	Another case over-ran
W2	Judge / magistrate availability due to illness etc.
W3	Case not reached / insufficient cases drop out / Floater not reached
W4	Equipment / accommodation failure
W5	No interpreter available
CROWN COURT ONLY	
X	Insufficient jurors available
Y	Outstanding cases / committals in a magistrates' court
Z	Outstanding cases / committals in other Crown Court centre

Code	Type of offence (magistrates' court cases only)
BUR	Burglary
DAM	Criminal damage
DWC	Driving without due care (summary)
DDR	Drunken Driving (summary)
DRU	Drug offences
FTS	Failing to stop (summary)
FRF	Fraud and forgery
IMO	Indictable motoring offences
OSM	Other summary motoring offences
ROB	Robbery
SEX	Sexual offences
SNM	Summary non motoring offences
THG	Theft & handling stolen goods
VAP	Violence against the person
XXX	Other indictable offences (excluding motoring offences)

CJSSS cases (magistrates' courts only) are where there is:

- a CPS / Police prosecution
- of an adult case
- commenced by way of charge; plus
- any other cases as agreed in an area's local scheme

Annex D Vacated Trials Monitoring Form

COURTHOUSE		AREA	
DATE OF TRIAL		CASE NUMBER	
DEF(S) NAME		URN	
ADULT / YOUTH / PYO / PPO (please circle)		IND / TEW / SM / SNM (please circle)	

DATE VACATED	
--------------	--

No. of times vacated before

FURTHER LISTING REQUIRED?
YES / NO

No. of PCMHs held

(please circle main reason)

A	Prosecution end case: prosecution discontinue case prior to trial date
B	Prosecution not ready: prosecution not ready for trial, further preparation needed
C	Prosecution witness absent: prosecution witness not able to attend trial: Police witness
D	Prosecution witness not able to attend trial: Other witness
E	Defendant ill / deceased / unable to attend
F	Defence not ready: further preparation needed
G	Defence witness not able to attend trial
H	Right to representation problems: Defendant dismissed legal representative
I	Lack of court time: Prosecution request increased time estimate
J	Lack of court time: Defence request increased time estimate
K	Lack of court time: Court vacate trial due to anticipated lack of court time
L	Defendant changed plea to guilty: original charge
M	Defendant changed plea to guilty: alternative charge
N	Defendant bound over at PCMH
O	Guilty plea with exceptional hardship pleaded
P	Accommodation / equipment failure

Listing Officer's Comments:	
Name: _____	Signature: _____

Guidance on the handling of Vacated Trials on CREST

1. Definition – What is a vacated trial?

A vacated trial is a trial that has been listed 'for trial' and is taken out of the list (stood out of the list) before the date of trial. Prior to the date set for trial, the Prosecution, the Defence or the Court makes an application to vacate the trial from the trial list. The application is accepted and approved by the court (Bench/Judge) and the trial is taken out of the list. All parties are notified and witnesses and defendants are de-warned. The reason for vacation is recorded by the listing officer in the vacated trial monitoring form. A further listing for the vacated trial may be required and the court time made available may or may not be used to hear another case.

2. Background

There is concern within HMCS that, whilst clear focus is being given to the problems surrounding cracked and ineffective hearings, those hearings which are merely vacated from lists are not being as closely considered. However, this can cause as much disruption to court users if they have already been notified of a hearing and are prepared to attend for it.

With regard to this, the following measures for handling the hearings on CREST should be followed in ALL instances where a hearing is vacated.

3. Handling

In the Crown Court all listed trials (whether in the warned, firm, fixed or daily lists) are to be recorded in the vacated trials monitoring form, as are those with a fixed date where the relevant lists have not yet been published. Floating trials which are listed but not called-on for trial should not be counted in the vacated trials return.

Whenever a case is removed from a list it should be processed under Listing REsults (LRES) and a reason entered. Even where a case has been listed in error the case should be removed from the list under LRES and the reason for its removal recorded. Failure to handle vacated hearings in this way will lead to incorrect reporting of listing issues at courts and make the issuing of guidance and best practice more problematic for all parties concerned.

In LRES, whenever a case is removed from a list it is important that a valid reason for its removal should be entered. Wherever possible, the reason entered should match those on the vacated trials return (or an abbreviated form thereof) so that they can be more easily matched when referencing cases on MIS.

Under no circumstances should List Control (Lists) be used since this simply deletes the hearing record, and results in incomplete and inaccurate data.

Where users have any concerns about the handling of a vacated trial on CREST and how to properly handle it they should refer in the first instance to their CREST Business Officer or, where they are unavailable, to **Paul Wimpenny** in Service & Supplier Management on **020 7217 4817**.