JUDICIARY OF
ENGLAND AND WALES

Criminal Bar Association

Ann Goddard Memorial Lecture

3 November 2015

All Change: What you need to know about Better Case Management and the Plea and Trial Preparation Hearing

It is an honour to be asked to speak at any Criminal Bar Association event but this one is a particular pleasure because I have such happy memories of Ann Goddard.

Many years ago, as a new member of the bar, I was very junior counsel to one of the parties in the Guildford Four/Maguire Seven Enquiry. My duties principally required the use of a kettle and a photocopier.

Ann Goddard, of course, had a much more elevated role but, in the finest traditions of the bar, she was unfailingly kind and helpful to me. And that will come as no surprise to those of you who also knew her.

I should caution that though I am a member of the Criminal Procedure Rule Committee the views I express are mine alone.

Introduction – The Challenges

So on with the topic. I am going out on a limb here - I say we live in exciting times for the Criminal Procedure Rules. I concede that's a combination of words I never expected to put together in one sentence but let me tell you why I say it is true.

On the tenth anniversary of the Criminal Procedure Rules our Criminal Justice System is facing two momentous challenges.

First our system is under tremendous pressure, probably greater now than at any time in my professional lifetime. Pressure as to resources and from demand - in short to do more with less. That is so even if the statistics show a slight falling off in the absolute numbers of cases being sent up to the Crown Court since about September last year. We judges are, in turn, very conscious of the pressures that places on the legal professions. And however much all of us would wish that greater resources were available it won't be happening any time soon.

The Leveson Efficiency Review, which the Rule Committee is seeking to implement where we can, is in great measure a response to those pressures. Better Case Management is another.

Second the criminal justice system has for too long been wedded to mounds of paper.

- Judges files, often in a state of disorder, are inadequately contained within bursting manila covers. Still.
- Advocates depend on the passing to them of papers before they can progress the case. Still.
- Indeed my Usher pointed out that the Crown Court's main administrative computer system – it goes by the name CREST- has been in place since before he was born; and has not changed much since.

The fact is we can no longer proceed at the pace of the most computer resistant judge or advocate.

So far as the Criminal Procedure Rule Committee is concerned that fundamental shift in approach took place, so far as I can see, last January. It occurred against the background of the forthcoming Digital Case System and beyond that the Common Platform both of which have been in development for some time and about which I shall speak shortly. We proceed now on the basis that there is simply no alternative but to embrace modern methods of electronic working and for all the rule changes we made last year that shift in approach is, in my view, the most significant and has the most wide ranging implications.

When I was a teenager I used to be sent out to France to spend time with a French family. In those days as some of you will recall the purchase of an air ticket used to take about three visits in person to the travel agent, waiting around whilst the agent made phone calls to call centres, and then, like as not, receiving a carbon copied handwritten ticket to take to the airport.

Nowadays pretty much all of us just go to the website of our favourite airline; book a cheap ticket in a matter of minutes and download a boarding pass to our printer or smart 'phone.

None but the most perverse would wish to go back to the old way of buying air tickets but that, in reality, has been where the Crown Court has been stuck for far too long.

Before we leave that analogy may I add that, so far as I have anything to do with it, I want to ensure that the basic electronic tools for judges and advocates will be no more complicated than buying a ticket from a budget airline. On that basis we can all do it. No-one need feel they will be left behind.

These two challenges – the pressures on the system and the move towards electronic working – are driving the changes that are coming our way.

These changes are not, as some cynics suggest, born of a wilful desire to change that which was working perfectly well; but rather an urgent programme to address fundamental problems.

The extent to which our current range of case management practices in the Crown Court create real problems down the line for our court users is not, I think, fully appreciated by those who spend their days in the courtroom – judges and advocates alike.

So let me move on to talk about two locomotives that are, even as I speak, racing down towards us on parallel tracks. Better Case Management and the Plea and Trial Preparation Hearing structure on the one track – and the Digital Case System on the other.

Better Case Management and the PTPH

BCM and the PTPH are in place in 6 early adopter courts, two of which, Isleworth and Woolwich, had their first PTPH hearings yesterday 2nd November. I took a list at Isleworth.

Symbolically I began it in an Isleworth court building surrounded by a thick fog such as you find described in the opening chapter of Bleak House – however I am happy to report that by lunchtime the fog had burned away and we had bright sunshine out of a clear blue sky. It went ok and for that let me express here my thanks to our excellent staff at Isleworth who have worked hard to make the arrangements and to the numerous agencies and individuals who have assisted us as early adopters.

The system goes national for England and Wales in January next year. The plan is that all cases sent after 5th January 2016 will be sent to a Plea and Trial Preparation Hearing. That requires a lot of work at a lot of levels.

There is a National Implementation Team. Then each circuit has its own implementation team. The South Eastern circuit has two – the London Implementation Team being chaired by the Recorder of London. Most if not all Crown Court centres will have their own implementation teams to bring together the various court users.

Although I fear that the news of these changes has only been getting through to some members of the legal professions quite recently the fact is that they have been in gestation for a considerable time and the subject of wide and vigorous consultation. I dare say that further changes will be made as a result of the experiences of the early adopters but I would urge you to see the implementation not as a one off event but as the commencement of a process of change.

BCM and the PTPH bring two key changes.

First there is the change in timing. In the Crown Court we have become used to not-guilty cases (NGAP) being sent by the magistrates for a largely perfunctory Preliminary Hearing followed by a PCMH at an arbitrary time; and altogether too many intermediate hearings before trial. Such chaos is no friend to the bar – rather it is a source of huge frustration to advocates as well as judges.

The new timing structure aims to have fewer but more effective hearings.

For those of you catching up here it is in a nutshell. For those of you who want further reading see the notes to this talk.

For bail cases the first magistrates hearing will take place within 28 days of charge. Before that hearing the prosecution are required to serve a good deal of material – it is a more comprehensive version of the IDPC bundle presently provided. That reflects the shift the CPS are making towards front-loading their preparation and their program of Transforming Summary Justice. The details of what is to be served are contained in the Criminal Practice Direction and – this is no accident – they are listed in the Plea and Trial Preparation Hearing Form so that we can all monitor how completely they do it.

Alongside the provision of that material there is a new formal duty of engagement to be found in Rule 3 (CrimPR 3.3) The prosecution and defence are required to engage before that hearing and, at the hearing, the Magistrates will expect a report on the outcome of that engagement.

The timing is different for custody cases. In custody cases the defendant must be put before the Magistrates' Court without delay and on much more limited paperwork. If a

custody case is sent then the deadline for the CPS to provide its material is seven days before the PTPH so the defence can plan accordingly.

The first hearing in the Crown Court will be the Plea and Trial Preparation Hearing (PTPH) which will generally take place within 28 days of sending.

The National Implementation Team has made provision for longer periods to be agreed circuit-wide. For example cases sent on a Saturday, predominately custody cases, will be sent to date beyond 28 days to give a bit more time for the police and CPS to present sufficient material for an effective PTPH. This will also allow some flexibility in listing to spread the work in an efficient manner and also some flexibility to allow proposed trial counsel to attend the PTPH.

Individual timetables will be needed for cases involving murder, terrorism, witnesses under age 10 or s.28 pre-trial cross-examination.

At the PTPH there is an expectation that a plea will be taken and directions given to carry the matter through to a trial. The emphasis is on getting things sorted out if they can be rather than putting them off.

In simple cases no further oral hearing should be required. Anything that is required should be achievable by administrative ruling – or maybe a telephone hearing. Of the cases I did yesterday about half clearly fell into this category.

In more complex cases a Further Case Management Hearing will be needed and can be programmed at the time when it will actually be most useful. The Criminal Practice Direction indicates those cases where a FCMH will generally be required and that is reproduced in the Introduction and Guidance Notes. In some cases a combined Further Case Management Hearing, Pre Trial Review and Ground Rules hearing may be possible – in other cases they may need to be separate.

Whatever the complexities of the case the parties will have to certify readiness for trial. Unless otherwise ordered that will be 28 days before trial.

May I draw your attention to two aspects of the timing:

- The PTPH takes place significantly later than the present preliminary hearings – between two and four weeks later. That does genuinely allow for sorting out Legal Aid and service and consideration of material before the PTPH. In many straightforward cases the PTPH will be able to consider pretty much the full prosecution case and we can expect clear witness requirements notified then and there;
- That said the PTPH takes place before the date when the prosecution are required under statute to serve its case. That is to say 50 days after sending for custody cases and 70 days after sending for bail cases[1]. Some will object that it is premature to take pleas or make case management decisions when the case is not served. I do not agree. The fact is that in the vast majority of cases that is perfectly possible and a set of directions can be given that can carry a case through to trial but equally make provision for a dismissal hearing.

So that is the change of timing coming from the Criminal Practice Direction.

[1] Crime and Disorder Act (Service of Prosecution Evidence) Regulations 2005.

On the back of that is the second change. We have in hand a major leap forward in case management to address the fact that at the moment most case management orders are given by the Judge orally and each Court centre and each Judge within that centre approaches management differently.

Let me start here. What is the major frustration we face in the criminal courts – and the most common cause that lists are clogged with mention hearings? It is, of course, failures to comply with orders. Often, but by no means exclusively, those are failures of the prosecution. And how many times have you participated in a mention hearing which commences with no-one being terribly clear why it was listed or what past orders have been made?

The PTPH structure aims to address this – and, critically, to pave the way towards more efficient electronic case management.

It is a fact that over the last 10 years the Rule Committee has made provisions requiring Judges actively to case manage (CrimPR 3.2); placing an obligation on the Court to make available to the parties a record of directions made (CrimPR 3.12); and to monitor compliance (CrimPR 3.4(4)). Until now, however, the tools to do that have not been provided and each Crown Court centre has been left to develop local systems.

Let me look at some ways that plays out.

First in most cases in most Crown Courts case management orders are still made routinely by the judge making oral orders which the parties, and the court clerk, try to note down. But what happens after that? For all their digital working systems the CPS relies on what is, in effect, a free text email based on notes made by the advocate or staff in court and sent back to the administration staff who, in turn, consider it and then load the tasks onto their computers. Yet further staff then seek to action the tasks referring matters to reviewing lawyers or the Officer in the Case. Overall I understand that the CPS digital systems had to set up 32 different processes to try to gather information from different Crown Courts.

An officer in the case who does not attend court hearings generally only hears about progress on his or her case when they are asked about availability – or sent a particular task – so the officer does not have any overall sense of the preparations into which their tasks fit.

Any of you who played the party game of Chinese Whispers as children, or worked in the criminal justice system in recent years, know just how fragile a system this is. Even when written orders are made the terms are still, too commonly, passed back in the way I have described.

I visited Drummond Gate to meet some of the large number of committed staff involved in CPS back office operation for London.

One of them showed me on their systems a judicial order from Isleworth due to be complied with that day. It was in rather odd terms. I wondered who had made it and they were able to show me. I had made the order but their record was not what I had ordered. We could check that by reviewing the scan of my written orders but they, of course, were relying on the Chinese Whisper. In this particular instance the whispers had converted an order I had made for the service of the audio of a defendant's interview into an order for the service of the ROTI – which had already been served. Cue for confusion.

So – the new PTPH form:

- provides a menu of common written orders as well as the opportunity to make bespoke orders; and
- That form is designated as the primary record of the orders made. The completed form will be distributed to the parties and the Officer in the case.

When I have shown drafts of the form to back office staff in CPS offices, to staff in a Police Criminal Justice Unit and to Officers in the Case I have asked: "how would you feel if you received written orders in this format?" Their responses have been universally positive. They welcome the clarity it will bring to their task.

- If we can cut out this chain of Chinese whispers then we can expect better and more accurate compliance.
- If frequently made orders are in identical terms across the country the potential for misunderstandings is reduced.

One Resident queried whether judges were being asked to spoon-feed the parties. I understand why he asked but I reject that. It won't do just to see this as a problem of the CPS, or of the Police, it behoves all of us to promote compliance by taking the time and trouble to ensure that orders are crystal clear and well distributed.

A menu of orders:

The PTPH form provides a menu of standard orders and it is reasonable to expect that a judge will select a standard order that covers the point they wish addressed rather than make a bespoke order. By this route the tasking of compliance and the monitoring of compliance is rendered much easier. Of course any judge is free to make any individual order he or she wishes as long as it is done within the form.

I offer my Tapas Bar analogy. If you went into a Tapas Bar and the waiter told you there was no menu but he would bring you what you asked for you might recall a few favourites you could describe vaguely but your prospects of getting what you wanted prepared in the way you wanted it would be bleak.

On the other hand if the waiter provided you with a detailed menu and asked you to tick the items you wanted then you would be prompted to order more dishes and could confidently expect to get what your ordered.

The structure of a judge selecting from a menu of standard orders, but always able to make a bespoke order where required, is something that we will be carrying through to the Common Platform where we will have full electronic case management. In that environment, for instance, the judicial act of ordering the provision of an audio recording can be set up so that it happens automatically. It will also allow proper electronic monitoring of compliance by the Court.

The four stages:

The PTPH form also provides a structure of case preparation in four stages – thus the first stage is for the Prosecution and includes the completion of service of the prosecution case but also any bad character notice. The second stage is for the Defence and requires the service of the Defence Statement and final witness requirements using the new Standard Witness Table. Stages 3 and 4 continue the process. This is a common structure for the whole jurisdiction.

We all know that multiple dates are the enemy of compliance. Where there are multiple dates hard pressed lawyers or staff, whether for the prosecution or defence, naturally focus on the next task due rather than taking an overview of the preparation.

Individual Criminal Procedure Rules have, over the years, set many different time limits measured from different points. The four stage structure seeks to provide a rationalisation because the four stages group together elements of case preparation for compliance on a single date – so in most cases the Judge will simply set those four dates.

Why should we have a single scheme for the whole jurisdiction?

Hitherto, in the absence of a single structure under the rules, each Crown Court has had no alternative but to develop its own system and its own standard directions.

The result is illustrated by a visit I made to the CPS office in Exeter. That provides the back office work for three different Crown Courts centres, each of which has only a few courts but each has different systems and standard directions. The result is that a CPS staff member who usually works on the Plymouth desk but who has to cover for an absent staff member who works the Exeter desk finds themselves working a different system. It just makes their task a lot harder than it needs to be. That difficulty in coping with different systems is reproduced for the police, and for counsel and solicitors who cover a number of court centres. But it does not just make life more difficult for the personnel – it represents a huge problem in setting up national computer systems that have to cope with multiple regional variations.

That said I have no doubt that the single structure is going to attract widespread criticism. How could it not? Each Crown Court has developed, and is used to, a system they think best addresses local issues. It is inevitable that orders or processes they currently value will not be there in the new system. But that is to ignore the urgent necessity for a single system.

In short if we have one structure across the jurisdiction then we stand a chance.

When it is implemented it is critical that we all stand against the development of local practices and local practice directions which will, if we are not careful, quickly erode the benefits of that single system. If parts of the new system need improvement (and they will) we do not want people to make a local fix – we need you to push for a national change and we welcome and encourage your suggestions.

Compliance Hearings

We are all frustrated when orders are made and not complied with. We have searched, mostly in vain, for meaningful sanctions that retain justice in the criminal courts.

The new Criminal Practice Direction speaks of compliance hearings and they may be needed as stand alone events. However in the rule committee we are developing a structure by which complaints of non-compliance which parties are obliged to bring to the attention of the court can be addressed promptly and efficiently, and, I have reason to hope, without requiring the presence of all parties in the courtroom.

I suggest that we can make a real difference not by punishing failure but by making compliance easier and developing systems that pick up on failures early.

The Digital Case System

I spoke of a second train coming down the tracks. Locomotive Two is DCS – the Digital Case System (formerly known as CaseLines). It will replace the paper court file, and make the case papers available online to prosecution and defence. So we can all work

from a full set of papers. No more archeological digs through paper files to see if something has been served. No more spats between the parties as to whether a defence case statement or bad character notice has been served.

Southwark and Leeds were early adopters and many of you may already have used the system. Our cases at Isleworth started to be loaded onto DCS yesterday so we will be doing PTPH with DCS from 30th November. It is to be rolled out across the entire jurisdiction by March.

Members of the bar will need at minimum:

- your own personal CJSM (Criminal Justice Secure email) account (a chambers group account will not do and not all emails are the same so you cannot use G-mail; Hotmail; Blueyonder or their ilk.)
- to have registered to use the PCU wi-fi now available in courts and also to use the DCS;

If any of that comes as a surprise to you then you need to go back to Chambers, rally the troops, and make sure you and your colleagues are prepared.

Many have pointed out that the PTPH form currently needs to be sent, pass the parcel style, from prosecution to defence to court if it is to be completed electronically. That is not ideal – in fact it is pretty clunky – and certainly presents difficulties with multi-defendant cases.

A solution is in hand. The DCS providers have been tasked to provide a system which allows the form to be completed by all parties within the DCS. Expect to be using it in the New Year, provided, of course, that the court you are appearing in has DCS up and running.

Concerns:

Is everything in the garden rosy – of course not. So may I address some concerns. I can assure you that those of us involved in the process are aware of concerns expressed by the professions and take them seriously.

Concerns about the Prosecution: The new structure is built on the expectation that the CPS will actually serve their materials as required, not just in time for hearings but in time for them to be considered with clients and for engagement to take place. There are reasons to expect that can be achieved.

- The Police and CPS have committed themselves to this.
- The new timetables gives the prosecution a longer period until PTPH than they had until Preliminary Hearing. Don't forget that the CPS have been serving IDPC bundles under the existing system and for the vast majority of cases the materials to be served prior to the PTPH are not vastly more than that.
- The reduction in the number of individual dates for compliance by the four stage process should promote more joined up decision making by the CPS.
- The standardised structure of preparation for trial allied to clear communication of orders should reduce the number of occasions the CPS are scrabbling to catch dropped balls.
- The DCS will simplify and speed service;

Concerns on the Defence side: We are conscious of the transition to the new Legal Aid Contracts. Inevitably that will put its own stress on the smooth provision of legal representation.

Firms who bid for the new Duty Provider Crime Contracts found out the result of their application on 15th October and those who were successful should begin providing service from 11th January 2016.

Many firms were delaying investing in new technology pending the outcome of the tendering process and firms who were unsuccessful are, if I can put it neutrally, considering a challenge to the process. In the interim they may not have the technology in place. We cannot delay the vital changes to the structures of case preparation until the Legal Aid contracting issues are resolved but it is my personal hope that we can maintain sufficient flexibility that no firm will be prematurely excluded from participation.

Remuneration: There are also perfectly proper concerns about how the new process is to be remunerated. This is not my specialised subject but I, and I believe others way above my pay grade, fully recognise that the revised structure will require adjustments to the Legal Aid payment arrangements if they are to work.

First the LAA has to deal promptly with applications so that Representation Orders can be in place before the expectation of engagement arises.

In most cases this should not be a problem: The Legal Aid Authority preliminary figures for 2014 show that 94% of all defendants in the Crown Court were represented at the first hearing – that would be the Preliminary Hearing. The PTPH we are contemplating will take place, in general, between two and four weeks later than those preliminary hearings did.

The Legal Aid Authority also states that they grant a representation order within 2 days in 90% of cases where there is a fully completed form and the defendant's means are not complex. On the other hand we all know that there are some cases with complex means that create difficulties and a few where the means enquiry seems to degenerate into an endless game of ping-pong. However prominent those instances are in our minds they are few.

You may know that the Legal Aid Authority is currently considering the Bar Council and Law Society proposals for reforming the graduated fee schemes. The intention of the revised fee schemes is to reduce or remove reliance on the page count of prosecution evidence but they have to be assessed to ensure that they are compatible both with the Efficiency Review and Better Case Management. We wish them a speedy and positive conclusion.

Three immediate good news points may assist.

- First that the Regulations have been amended so that a PTPH is to be remunerated like a PCMH.
- Second you will be happy to hear that the DCS includes an electronic button that you can press to get the Legal Aid page count.
- Third for cases involving indictable offences and where an application for Legal Aid is made after the case has been sent to the Crown Court the defendant may self-certify means at the point of application. This facilitates prompt grant. Means evidence has to be provided within 14 days but if not there is a sanction but not revocation of the order.

I also feel that we simply have to tackle the issue of a defendant who wants to plead guilty and be sentenced before a certificate is granted but where representatives have done work in expectation of the grant. There certainly seems to me a justification for an extension of a discretion to the Judge to grant legal aid in a way comparable to the power to grant where a defendant appears for breach of an order and there has been no time to apply for legal representation.

Access to your clients: We are aware of the need to improve access to defendants in custody. Within the London Implementation Team, and the implementation team for my own court we are working with the prisons to facilitate this but a national push to improve access, whether in person or over video links is clearly needed.

Listing: I agree that if advocates are going to commit to preparation then it of the utmost importance that we judges, and our listing officers, give due consideration to the availability of counsel when listing cases, though plainly that cannot trump all other considerations. Early listing helps, as does good communication of availability. More sophisticated listing should be possible with the Common Platform to which I now turn.

The Common Platform

I have spoken of two locomotives hurtling down the tracks towards us but what are they working on in the Engine Sheds? The Digital Case System is a useful tool but it is not the end of the story. The stage beyond is called The Common Platform.

The plan is that the Common Platform will replace the IT systems of the Court Service and the CPS with a single system so that all criminal justice system users – the Police, the CPS, the Court and the defence can access the same database, subject to limitations appropriate to their role.

Alongside that will be capacity for full online case management with the results visible to all, electronic monitoring of compliance with alerts when things go wrong and listing functions to provide, for the first time, powerful IT support for both case progression and listing.

The move towards a standardised structure to take a case from sending hearing to trial and the provision of menus of standard orders are all essential building blocks towards that common platform. Expect to see other building blocks – for instance a mandatory system to alert the court to failures of compliance – as that work goes on.

As we become used to the Digital Case System I am convinced that judges and advocates alike will be looking forward to the improved functionality of the Common Platform.

And finally

So far you may think this has been an extended promotion for Better Case Management and the PTPH – and you would be right. But that is because, for all the risks, I am optimistic that this will deliver real dividends.

The essentials of what we all seek to do – to provide a fair and just trial – have not changed at all. The changes about which I have spoken are all efforts to support the continuation of such a fair trial structure; to provide the tools to do the job; to promote compliance rather than punishing failure. In short to make the system work better.

Change brings stresses for all of us. Some aspects are bound to work better than others. But: I firmly believe that this time next year the question we will be asking ourselves will not be "Why did we do this" but "Why did we not do this earlier".

HHJ Edmunds QC

3rd November 2015.

Some reference materials

The Ministry of Justice Criminal Procedure Rules Page

https://www.justice.gov.uk/courts/procedure-rules/criminal

On this page is a link to the 2015 rules

There is also a link (in the entry for September 2015) to a guide to the changes

https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/criminal-procedure-rules-2015-guide.pdf

The Ministry of Justice Forms page

https://www.justice.gov.uk/courts/procedure-rules/criminal/forms-2015

Under Case Management are the Introduction and Guidance; the forms for PTPH (1 defendant; 10 defendant and Part 2 only); the Standard Witness Table.

There are also new forms for:

Part 23 - Restrictions on Cross-Examination by a Defendant in person

Part 46 – Application by a person with Legal Aid to change solicitor

Better Case Management Information Pack and Newsletters:

Information Pack – including CrimPD and relevant CrimPR

https://www.judiciary.gov.uk/wp-content/uploads/2015/09/better-case-management-information-pack-3.pdf

No.1

https://www.judiciary.gov.uk/wp-content/uploads/2015/09/bcm-newsletter-1-09092015-11.pdf

No.2

https://www.judiciary.gov.uk/publications/better-case-management-newsletter-2

No.3

Is imminent

The Legal Aid Agency's Newsletter

https://www.gov.uk/government/news/crime-news-better-case-management-rollout-and-new-guidance

Other Changes

The lecture concentrates on Better Case Management and the Plea and Trial Preparation Hearing. It may be helpful to flag up the following changes as well:

1. We celebrated the 10th anniversary of the rules by changing all the rule numbers. I'm sorry if you had been memorising the old rule numbers but this is a more logical organisation of the rules to carry us forward.
2. The duty of engagement to which I have already referred is a key change which emerged from the Efficiency Review. Rule 3.3 makes it one of the duties of the parties. There is also a new duty on Experts in Rule 19 to assist the court with its duty of case management by complying with directions made by the court and informing the court of any significant failure (by the expert or another) to take any step required by such directions.
3. The rules now cater for electronic service and uploading. Rule 4.6 – in effect if a solicitor has given an electronic address then sending it to that electronic address is service – as is uploading it to an electronic address (such at the Digital Case System). That is not without exceptions – for example personal service remains essential in contempt proceedings. We are aware of the issues for firms unsuccessful in the recent LAA contracting process who do not, for the present, have CJSM accounts.
4. There are changes to the rules on Crown Court trials that permit a judge to give legal directions at any stage of the trial and to assist the jury in writing. These overcome concerns raised in the cases of Bennett [2014] EWCA Crim 2652 and NKA[2015] EWCA Crim 614. In short the revised rules expressly permit a split summing up in which a judge, prior to the advocates' speeches will provide an authoritative statement covering duties, the burden and standard of proof, the elements of the offence and any relevant defence such as self defence (usually with a written route to verdict). The Advocates speeches can then focus on the issues identified by the judge. The judge may also assist the jury in writing, whether by way of a chronology; a written summary of the expert evidence or in any other way. Judges are also freed to provide legal directions at other stages of the trial – perhaps just before or just after the relevant evidence has been given. Rule 25.14 is in these terms:

   > "*The court must give the jury directions about the relevant law at any time at which to do so will assist jurors to evaluate the evidence*"

   Those of us who have used split summing up for some years now find it feels natural, is popular with advocates and juries, and represents a real improvement in the trial process.

   An addition to the Criminal Practice Direction is on its way – content not yet finalised – to guide judges in the use of this new power.
5. Part 23 deals with the restrictions on a defendant in person cross-examining certain witnesses. It has been substantially re-worked. The complexities of the rule mirroring the complexities of the principal legislation. Again there is a form to go with to facilitate the decision making process with as few hearings as possible and which is as another building block to the common platform.
6. Part 46 contain new provisions to identify when a legal representative is acting and there are new rules and forms to go with them for those with legal

representation orders who want to apply to the court to change representative. The forms for this are intended to facilitate the decision making process without an oral hearing being required and are another of those building blocks towards the common platform.

7. Though not in the rules BCM includes new procedures for disclosure in document heavy cases. This has been developed in pilots at four courts (Birmingham, Manchester, Kingston and Southwark). It involves the use of a single Disclosure Management Document
8. For another, more detailed, summary of the changes see the Guide to the Criminal Procedure Rules 2015

   https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/criminal-procedure-rules-2015-guide.pdf

HHJ EDMUNDS QC

3 November 2015

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