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IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/03/2016

Before :

LORD CHIEF JUSTICE OF ENGLAND AND WALES

Criminal Practice Directions 2015
Amendment No. 1

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AMENDMENT NO. 1 TO THE CRIMINAL PRACTICE DIRECTONS 2015

This is the first amendment to the Criminal Practice Directions 2015 [2015] EWCA 1567. It is handed down by the Lord Chief Justice on 23 March 2016 and comes into force on 4 April 2016, at the same time as the Criminal Procedure (Amendment) Rules 2016 (SI 2016/120). It amends existing practice directions and adds new ones.

In summary, the Criminal Practice Directions 2015 are subject to the following amendments:

A. **An amended Table of Content with additions to the contents of Division I (6B) and Division VI (24B and 25A)**

B. **A replacement practice direction on intermediaries (CPD I General matters 3F: INTERMEDIARIES)**

C. **A new practice direction on taking notes in court (CPD I General matters 6D: TAKING NOTES IN COURT)**

D. **A replacement practice direction on voluntary bills of indictment (CPD II Preliminary proceedings 10B: VOLUNTARY BILLS OF INDICTMENT)**

E. **A new practice direction on defence identification of the issues in magistrates' courts (CPD VI Trial 24B: IDENTIFICATION FOR THE COURT OF THE ISSUES IN THE CASE)**

F. **A new practice direction on defence identification of the issues in the Crown Court (CPD VI Trial 25A: IDENTIFICATION FOR THE JURY OF THE ISSUES IN THE CASE)**

G. **A replacement practice direction on early directions, written route to verdict, other written materials and summing up (including split summing up) (CPD VI Trial 26K: JURIES: DIRECTIONS, WRITTEN MATERIALS AND SUMMING UP)**

H. **A replacement practice direction on appeal notices (CPD IX Appeal 39C: APPEAL NOTICES AND GROUNDS OF APPEAL)**

The specifics are as follows:

A. <u>Amended Table of Content</u>

The Table of Content is amended as follows to reflect additional practice directions in Division I (6D) and Division VI (24B and 25A):

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B. <u>Replacement practice direction on intermediaries</u>

The replacement practice direction reads as follows:

CPD I General matters 3F: INTERMEDIARIES

Role and functions of intermediaries in criminal courts

3F.1 Intermediaries facilitate communication with witnesses and defendants who have communication needs. Their primary function is to improve the quality of evidence and aid understanding between the court, the advocates and the witness or defendant. For example, they commonly advise on the formulation of questions so as to avoid misunderstanding. On occasion, they actively assist and intervene during questioning. The extent to which they do so (if at all) depends on factors such as the communication needs of the witness or defendant, and the skills of the advocates in adapting their language and questioning style to meet those needs.

3F.2 Intermediaries are independent of parties and owe their duty to the court. The court and parties should be vigilant to ensure they act impartially and their assistance to witnesses and defendants is transparent. It is however permissible for an advocate to have a private consultation with an intermediary when formulating questions (although control of questioning remains the overall responsibility of the court).

3F.3 Further information is in *Intermediaries: Step by Step* (Toolkit 16; The Advocate's Gateway, 2015) and chapter 5 of the *Equal Treatment Bench Book* (Judicial College, 2013).

Links to publications

- http://www.theadvocatesgateway.org/images/toolkits/16intermediariesstepbystep060315.pdf
- https://www.judiciary.gov.uk/wp-content/uploads/2013/11/5-children-and-vulnerable-adults.pdf

Assessment

3F.4 The process of appointment should begin with assessment by an intermediary and a report. The report will make recommendations

to address the communication needs of the witness or defendant during trial.

3F.5 In light of the scarcity of intermediaries, the appropriateness of assessment must be decided with care to ensure their availability for those witnesses and defendants who are most in need. The decision should be made on an individual basis, in the context of the circumstances of the particular case.

Intermediaries for prosecution and defence witnesses

3F.6 Intermediaries are one of the special measures available to witnesses under the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999). Witnesses deemed vulnerable in accordance with the criteria in s.16 YJCEA are eligible for the assistance of an intermediary when giving evidence pursuant to s.29 YJCEA 1999. These provisions do not apply to defendants.

3F.7 An application for an intermediary to assist a witness when giving evidence must be made in accordance with Part 18 of the Criminal Procedure Rules. In addition, where an intermediary report is available (see 3F.4 above), it should be provided with the application.

3F.8 The Witness Intermediary Scheme (WIS) operated by the National Crime Agency identifies intermediaries for witnesses and may be used by the prosecution and defence. The WIS is contactable at wit@nca.x.gsi.gov.uk / 0845 000 5463. An intermediary appointed through the WIS is defined as a 'Registered Intermediary' and matched to the particular witness based on expertise, location and availability. Registered Intermediaries are accredited by the WIS and bound by Codes of Practice and Ethics issued by the Ministry of Justice (which oversees the WIS).

3F.9 Having identified a Registered Intermediary, the WIS does not provide funding. The party appointing the Registered Intermediary is responsible for payment at rates specified by the Ministry of Justice.

3F.10 Further information is in *The Registered Intermediaries Procedural Guidance Manual* (Ministry of Justice, 2015) and *Intermediaries: Step by Step* (see 3F.3 above).

Link to publication

- http://www.theadvocatesgateway.org/images/procedures/registered-intermediary-procedural-guidance-manual.pdf

Intermediaries for defendants

3F.11 Statutory provisions providing for defendants to be assisted by an intermediary when giving evidence (where necessary to ensure a fair trial) are not in force (because s.104 Coroners and Justice Act 2009, which would insert ss. 33BA and 33BB into the YJCEA 1999, has yet to be commenced).

3F. 12 The court may direct the appointment of an intermediary to assist a defendant in reliance on its inherent powers (*C v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin)). There is however no presumption that a defendant will be so assisted and, even where an intermediary would improve the trial process, appointment is not mandatory (*R v Cox* [2012] EWCA Crim 549). The court should adapt the trial process to address a defendant's communication needs (*R v Cox* [2012] EWCA Crim 549) and will rarely exercise its inherent powers to direct appointment of an intermediary.

3F.13 The court may exercise its inherent powers to direct appointment of an intermediary to assist a defendant giving evidence or for the entire trial. Terms of appointment are for the court and there is no illogicality in restricting the appointment to the defendant's evidence (*R v R* [2015] EWCA Crim 1870), when the 'most pressing need' arises (*OP v Secretary of State for Justice* [2014] EWHC 1944 (Admin)). Directions to appoint an intermediary for a defendant's evidence will thus be rare, but for the entire trial extremely rare.

3F.14 An application for an intermediary to assist a defendant must be made in accordance with Part 18 of the Criminal Procedure Rules. In addition, where an intermediary report is available (see 3F.4 above), it should be provided with the application.

3F.15 The WIS is not presently available to identify intermediaries for defendants (although in *OP v Secretary of State for Justice* [2014] EWHC 1944 (Admin), the Ministry of Justice was ordered to consider carefully whether it were justifiable to refuse equal provision to witnesses and defendants with respect to their evidence). 'Non-registered intermediaries' (intermediaries appointed other than through the WIS) must therefore be appointed for defendants. Although training is available, there is no accreditation process for non-registered intermediaries and rates of payment are unregulated.

3F.16 Arrangements for funding of intermediaries for defendants depend on the stage of the appointment process. Where the defendant is publicly funded, an application should be made to the Legal Aid Agency for prior authority to fund a pre-trial assessment. If the application is refused, an application may be made to the court to use its inherent powers to direct a pre-trial assessment and funding thereof. Where the court uses its inherent powers to direct assistance by an intermediary at trial (during evidence or for the

entire trial), court staff are responsible for arranging payment from Central Funds. Internal guidance for court staff is in *Guidance for HMCTS Staff: Registered and Non-Registered Intermediaries for Vulnerable Defendants and Non-Vulnerable Defence and Prosecution Witnesses* (Her Majesty's Courts and Tribunals Service, 2014).

3F.17 The court should be satisfied that a non-registered intermediary has expertise suitable to meet the defendant's communication needs.

3F.18 Further information is in *Intermediaries: Step by Step* (see 3F.3 above).

Ineffective directions for intermediaries to assist defendants

3F.19 Directions for intermediaries to help defendants may be ineffective due to general unavailability, lack of suitable expertise, or non-availability for the purpose directed (for example, where the direction is for assistance during evidence, but an intermediary will only accept appointment for the entire trial).

3F.20 Intermediaries may contribute to the administration of justice by facilitating communication with appropriate defendants during the trial process. A trial will not be rendered unfair because a direction to appoint an intermediary for the defendant is ineffective. 'It would, in fact, be a most unusual case for a defendant who is fit to plead to be so disadvantaged by his condition that a properly brought prosecution would have to be stayed' because an intermediary with suitable expertise is not available for the purpose directed by the court (*R v Cox* [2012] EWCA Crim 549).

3F.21 Faced with an ineffective direction, it remains the court's responsibility to adapt the trial process to address the defendant's communication needs, as was the case prior to the existence of intermediaries (*R v Cox* [2012] EWCA Crim 549). In such a case, a ground rules hearing should be convened to ensure every reasonable step is taken to facilitate the defendant's participation in accordance with CrimPR 3.9. At the hearing, the court should make new, further and / or alternative directions. This includes setting ground rules to help the defendant follow proceedings and (where applicable) to give evidence.

3F.22 For example, to help the defendant follow proceedings the court may require evidence to be adduced by simple questions, with witnesses being asked to answer in short sentences. Regular breaks may assist the defendant's concentration and enable the defence advocate to summarise the evidence and take further instructions.

3F. 23 Further guidance is available in publications such as *Ground Rules Hearings and the Fair Treatment of Vulnerable People in Court* (Toolkit 1; The Advocate's Gateway, 2015) and *General Principles from Research - Planning to Question a Vulnerable Person or Someone with Communication Needs* (Toolkit 2(a); The Advocate's Gateway, 2015). In the absence of an intermediary, these publications include information on planning how to manage the participation and questioning of the defendant, and the formulation of questions to avert misunderstanding (for example, by avoiding 'long and complicated questions…posed in a leading or 'tagged' manner' (*R v Wills* [2011] EWCA Crim 1938, [2012] 1 Cr App R 2)).

Links to publications

- http://www.theadvocatesgateway.org/images/toolkits/1groundruleshearingsandthefairtreatmentofvulnerablepeopleincourt060315.pdf
- http://www.theadvocatesgateway.org/images/toolkits/2generalprinciplesfromresearchpolicyandguidance-planningtoquestionavulnerablepersonorsomeonewithcommunicationneeds141215.pdf

Intermediaries for witnesses and defendants under 18

3F.24 Communication needs (such as short attention span, suggestibility and reticence in relation to authority figures) are common to many witnesses and defendants under 18. Consideration should therefore be given to the communication needs of all children and young people appearing in the criminal courts and to adapting the trial process to address any such needs. Guidance is available in publications such as *Planning to Question a Child or Young Person* (Toolkit 6; The Advocate's Gateway, 2015) and *Effective Participation of Young Defendants* (Toolkit 8; The Advocate's Gateway, 2013).

Links to publications

- http://www.theadvocatesgateway.org/images/toolkits/6planningtoquestionachildoryoungperson141215.pdf
- http://www.theadvocatesgateway.org/images/toolkits/8YoungDefendants211013.pdf

3F.25 For the reasons set out in 3F.5 above, the appropriateness of an intermediary assessment for witnesses and defendants under 18 must be decided with care. Whilst there is no presumption that they will be assessed by an intermediary (to evaluate their communication needs prior to trial) or assisted by an intermediary at court (for example, if / when giving evidence), the decision should be made on an individual basis in the context of the circumstances of the particular case.

3F.26 Assessment by an intermediary should be considered for witnesses and defendants under 18 who seem liable to misunderstand questions or to experience difficulty expressing answers, including those who seem unlikely to be able to recognise a problematic question (such as one that is misleading or not readily understood), and those who may be reluctant to tell a questioner in a position of authority if they do not understand.

Attendance at ground rules hearing

3F.27 Where the court directs questioning will be conducted through an intermediary, CrimPR 3.9 requires the court to set ground rules. The intermediary should be present at the ground rules hearing to make representations in accordance with CrimPR 3.9(7)(a).

Listing

3F.28 Where the court directs an intermediary will attend the trial, their dates of availability should be provided to the court. It is preferable that such trials are fixed rather than placed in warned lists.

Photographs of court facilities

3F.29 Resident Judges in the Crown Court or the Chief Clerk or other responsible person in the magistrates' courts should, in consultation with HMCTS managers responsible for court security matters, develop a policy to govern under what circumstances photographs or other visual recordings may be made of court facilities, such as a live link room, to assist vulnerable or child witnesses to familiarise themselves with the setting, so as to be enabled to give their best evidence. For example, a photograph may provide a helpful reminder to a witness whose court visit has taken place sometime earlier. Resident Judges should tend to permit photographs to be taken for this purpose by intermediaries or supporters, subject to whatever restrictions the Resident Judge or responsible person considers to be appropriate, having regard to the security requirements of the court.

C. <u>New practice direction on taking notes in court</u>

The new practice direction reads as follows:

CPD I General matters 6D: TAKING NOTES IN COURT

6D.1 As long as it does not interfere with the proper administration of justice, anyone who attends a court hearing may quietly take notes, on paper or by silent electronic means. If that person is a participant, including an expert witness who is in the courtroom

under CrimPR 24.4(2)(a)(ii) or 25.11(2)(a)(ii), note taking may be an essential aid to that person's own or (if they are a representative) to their client's effective participation. If that person is a reporter or a member of the public, attending a hearing to which, by definition, they have been admitted, note taking is a feature of the principle of open justice. The permission of the court is not required, and the distinctions between members of the public and others which are drawn at paragraphs 6C.7 and 6C.8 of these Practice Directions do not apply.

6D.2 However, where there is reason to suspect that the taking of notes may be for an unlawful purpose, or that it may disrupt the proceedings, then it is entirely proper for court staff to make appropriate enquiries, and ultimately it is within the power of the court to prohibit note taking by a specified individual or individuals in the court room if that is necessary and proportionate to prevent unlawful conduct. If, for example, there is reason to believe that notes are being taken in order to influence the testimony of a witness who is due to give evidence, perhaps by briefing that witness on what another witness has said, then because such conduct is unlawful (it is likely to be in contempt of court, and it may constitute a perversion of the course of justice) it is within the court's power to prohibit such note taking. If there is reason to believe that what purports to be taking notes with an electronic device is in fact the transmission of live text-based communications from court without the permission required by paragraph 6C.7 of these Practice Directions, or where permission to transmit such communications has been withdrawn under paragraph 6C.14, then that, too, would constitute grounds for prohibiting the taking of such notes.

6D.3 The existence of a reporting restriction, without more, is not a sufficient reason to prohibit note taking (though it may need to be made clear to those who take notes that the reporting restriction affects how much, if any, of what they have noted may be communicated to anyone else). However, if there is reason to believe that notes are being taken in order to facilitate the contravention of a reporting restriction then that, too, would constitute grounds for prohibiting such note taking.

D. <u>Replacement practice direction on voluntary bills of indictment</u>

The replacement practice direction reads as follows:

CPD II Preliminary proceedings 10B: VOLUNTARY BILLS OF INDICTMENT

10B.1 Section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933 and paragraph 2(6) of Schedule 3 to the Crime and Disorder Act 1998 allow the preferment of a bill of

indictment by the direction or with the consent of a judge of the High Court. Bills so preferred are known as 'voluntary bills'.

10B.2 Applications for such consent must comply with CrimPR 10.3.

10B.3 Those requirements should be complied with in relation to each defendant named in the indictment for which consent is sought, whether or not it is proposed to prefer any new count against him or her.

10B.4 The preferment of a voluntary bill is an exceptional procedure. Consent should only be granted where good reason to depart from the normal procedure is clearly shown and only where the interests of justice, rather than considerations of administrative convenience, require it.

10B.5 Prosecutors must follow the procedures prescribed by the rule unless there are good reasons for not doing so, in which case prosecutors must inform the judge that the procedures have not been followed and seek leave to dispense with all or any of them. Judges should not give leave to dispense unless good reasons are shown.

10B.6 A judge to whom application for consent to the preferment of a documents submitted by the prosecutor and any written submissions made by the prospective defendant, and may properly seek any necessary amplification. CrimPR 10.3(4)(b) allows the judge to set a timetable for representations. The judge may invite oral submissions from either party, or accede to a request for an opportunity to make oral submissions, if the judge considers it necessary or desirable to receive oral submissions in order to make a sound and fair decision on the application. Any such oral submissions should be made on notice to the other party and in open court unless the judge otherwise directs.

E. <u>New practice direction on defence identification of the issues in magistrates' courts</u>

The new practice direction reads as follows:

CPD VI Trial 24B: IDENTIFICATION FOR THE COURT OF THE ISSUES IN THE CASE

24B.1 CrimPR 3.11(a) requires the court, with the active assistance of the parties, to establish what are the disputed issues in order to manage the trial. To that end, the purpose of the prosecutor's summary of the prosecution case is to explain briefly, in the prosecutor's own terms, what the case is about. It will not usually be necessary, or helpful, to present a detailed account of all the prosecution evidence due to be introduced.

24B.2 CrimPR 24.3(3)(b) provides for a defendant, or his or her advocate, immediately after the prosecution opening to set out the issues in the defendant's own terms, if invited to do so by the court. The purpose of any such identification of issues is to provide the court with focus as to what it is likely to be called upon to decide, so that the members of the court will be alert to those issues from the outset and can evaluate the prosecution evidence that they hear accordingly.

24B.3 The parties should keep in mind that, in most cases, the members of the court already will be aware of what has been declared to be in issue. The court will have access to any written admissions and to information supplied for the purposes of case management: CrimPR 24.13(2). The court's legal adviser will have drawn the court's attention to what is alleged and to what is understood to be in dispute: CrimPR 24.15(2). If a party has nothing of substance to add to that, then he or she should say so. The requirement to be concise will be enforced and the exchange with the court properly may be confined to enquiry and confirmation that the court's understanding of those allegations and issues is correct. Nevertheless, for the defendant to be offered an opportunity to identify issues at this stage may assist even if all he or she wishes to announce, or confirm, is that the prosecution is being put to proof.

24B.4 The identification of issues at the case management stage will have been made without the risk that they would be used at trial as statements of the defendant admissible in evidence against the defendant, provided the advocate follows the letter and the spirit of the Criminal Procedure Rules. The court may take the view that a party is not acting in the spirit of the Criminal Procedure Rules in seeking to ambush the other party or raising late and technical legal arguments that were not previously raised as issues. No party that seeks to ambush the other at trial should derive an advantage from such a course of action. The court may also take the view that a defendant is not acting in the spirit of the Criminal Procedure Rules if he or she refuses to identify the issues and puts the prosecutor to proof at the case management stage. In both such circumstances the court may limit the proceedings on the day of trial in accordance with CrimPR 3.11(d). In addition any significant divergence from the issues identified at case management at this late stage may well result in the exercise of the court's powers under CrimPR 3.5(6), the powers to impose sanctions.

F. <u>New practice direction on defence identification of the issues in the Crown Court</u>

The replacement practice direction reads as follows:

CPD VI Trial 25A: IDENTIFICATION FOR THE JURY OF THE ISSUES IN THE CASE

25A.1 CrimPR 3.11(a) requires the court, with the active assistance of the parties, to establish what are the disputed issues in order to manage the trial. To that end, prosecution opening speeches are invaluable. They set out for the jury the principal issues in the trial, and the evidence which is to be introduced in support of the prosecution case. They should clarify, not obfuscate. The purpose of the prosecution opening is to help the jury understand what the case concerns, not necessarily to present a detailed account of all the prosecution evidence due to be introduced.

25A.2 CrimPR 25.9(2)(c) provides for a defendant, or his or her advocate, to set out the issues in the defendant's own terms (subject to superintendence by the court), immediately after the prosecution opening. Any such identification of issues at this stage is not to be treated as a substitute for or extension of the summary of the defence case which can be given later, under CrimPR 25.9(2)(g). Its purpose is to provide the jury with focus as to the issues that they are likely to be called upon to decide, so that jurors will be alert to those issues from the outset and can evaluate the prosecution evidence that they hear accordingly. For that purpose, the defendant is not confined to what is included in the defence statement (though any divergence from the defence statement will expose the defendant to adverse comment or inference), and for the defendant to take the opportunity at this stage to identify the issues may assist even if all he or she wishes to announce is that the prosecution is being put to proof.

25A.3 To identify the issues for the jury at this stage also provides an opportunity for the judge to give appropriate directions about the law; for example, as to what features of the prosecution evidence they should look out for in a case in which what is in issue is the identification of the defendant by an eye-witness. Giving such directions at the outset is another means by which the jury can be helped to focus on the significant features of the evidence, in the interests of a fair and effective trial.

25A.4 A defendant is not entitled to identify issues at this stage by addressing the jury unless the court invites him or her to do so. Given the advantages described above, usually the court should extend such an invitation but there may be circumstances in which, in the court's judgment, it furthers the overriding objective not to do so. Potential reasons for denying the defendant the opportunity at this stage to address the jury about the issues include (i) that the case is such that the issues are apparent; (ii) that the prosecutor has given a fair, accurate and comprehensive account of the issues in opening, rendering repetition superfluous; and (iii) where the defendant is not represented, that there is a

risk of the defendant, at this early stage, inflicting injustice on him or herself by making assertions to the jury to such an extent, or in such a manner, as is unfairly detrimental to his or her subsequent standing.

25A.5 Whether or not there is to be a defence identification of issues, and, if there is, in what manner and in what terms it is to be presented to the jury, are questions that must be resolved in the absence of the jury and that should be addressed at the opening of the trial.

25A.6 Even if invited to identify the issues by addressing the jury, the defendant is not obliged to accept the invitation. However, where the court decides that it is important for the jury to be made aware of what the defendant has declared to be in issue in the defence statement then the court may require the jury to be supplied with copies of the defence statement, edited at the court's direction if necessary, in accordance with section 6E(4) of the Criminal Procedure and Investigations Act 1996.

G. <u>A replacement practice direction on early directions, written route to verdict, other written materials and summing up (including split summing up)</u>

The replacement practice direction reads as follows:

CPD VI Trial 26K: JURIES: DIRECTIONS, WRITTEN MATERIALS AND SUMMING UP

Overview

26K.1 Sir Brian Leveson's *Review of Efficiency in Criminal Proceedings 2015* contained recommendations to improve the efficiency of jury trials including:

- Early provision of appropriate directions;
- Provision of a written route to verdict;
- Provision of a split summing up (a summing up delivered in two parts – the first part prior to the closing speeches and the second part afterwards); and
- Streamlining the summing up to help the jury focus on the issues.

The purpose of this practice direction, and the associated criminal procedure rules, is to give effect to these recommendations.

Record-keeping

26K.2 Full and accurate record-keeping is essential to enable the Registrar of Criminal Appeals to obtain transcripts in the event of an application or appeal to the Court of Appeal (Criminal Division).

26K.3 A court officer is required to record the date and time at which the court provides directions and written materials (CrimPR 25.18(e)(iv)-(v)).

26K.4 The judge should ensure that a court officer (such as a court clerk or usher) is present in court to record the information listed in paragraph 26K.5.

26K.5 A court officer should clearly record the:

- Date, time and subject of submissions and rulings relating to directions and written materials;
- Date, time and subject of directions and written materials provided prior to the summing up; and
- Date and time of the summing up, including both parts of a split summing up.

26K.6 A court officer should retain a copy of written materials on the court file or database.

26K.7 The parties should also record the information listed in paragraph 26K.5 and retain a copy of written materials. Where relevant to a subsequent application or appeal to the Court of Appeal (Criminal Division), the information listed in paragraph 26K.5 should be provided in the notice of appeal, and any written materials should be identified.

Early provision of appropriate directions

26K.8 The court is required to provide directions about the relevant law at any time that will assist the jury to evaluate the evidence (CrimPR 25.14(2)). The judge may provide an early direction prior to any evidence being called, prior to the evidence to which it relates or shortly thereafter.

26K.9 Where the judge decides it will assist the jury in:

- their approach to the evidence; and / or
- evaluating the evidence as they hear it

an early direction should be provided.

26K.10 For example:

- Where identification is in issue, an early *Turnbull* direction is likely to assist the jury in approaching the evidence with the requisite caution; and by having the relevant considerations in mind when listening to the evidence.

- Where special measures are to be used and / or ground rules will restrict the manner and scope of questioning, an early explanation may assist the jury in their approach to the evidence.

- An early direction may also assist the jury, by having the relevant approach, considerations and / or test in mind, when listening to:

  - Expert witnesses; and
  - Evidence of bad character;
  - Hearsay;
  - Interviews of co-defendants; and
  - Evidence involving legal concepts such as knowledge, dishonesty, consent, recklessness, conspiracy, joint enterprise, attempt, self-defence, excessive force, voluntary intoxication and duress.

Written route to verdict

26K.11 A route to verdict, which poses a series of questions that lead the jury to the appropriate verdict, may be provided by the court (CrimPR 25.14(3)(b)). Each question should tailor the law to the issues and evidence in the case.

26K.12 Save where the case is so straightforward that it would be superfluous to do so, the judge should provide a written route to verdict. It may be presented (on paper or digitally) in the form of text, bullet points, a flowchart or other graphic.

Other written materials

26K.13 Where the judge decides it will assist the jury, written materials should be provided. They may be presented (on paper or digitally) in the form of text, bullet points, a table, a flowchart or other graphic.

26K.14 For example, written materials may assist the jury in relation to a complex direction or where the case involves:

- A complex chronology;
- Competing expert evidence; or
- Differing descriptions of a suspect.

26K.15 Such written materials may be prepared by the judge or the parties at the direction of the judge. Where prepared by the parties at the direction of the judge, they will be subject to the judge's approval.

Split summing up and provision of appropriate directions prior to closing speeches

26K.16 Where the judge decides it will assist the jury when listening to the closing speeches, a split summing up should be provided. For example, the provision of appropriate directions prior to the closing speeches may avoid repetitious explanations of the law by the advocates.

26K. 17 By way of illustration, such directions may include:

- Functions of the judge and jury;
- Burden and standard of proof;
- Separate consideration of counts;
- Separate consideration of defendants;
- Elements of offence(s);
- Defence(s);
- Route to verdict;
- Circumstantial evidence; and
- Inferences from silence.

Closing speeches

26K.18 The advocates closing speeches should be consistent with any directions and route to verdict already provided by the judge.

Summing up

26K.19 Prior to beginning or resuming the summing up at the conclusion of the closing speeches, the judge should briefly list (without repeating) any directions provided earlier in the trial. The purpose of this requirement is to provide a definitive account of all directions for the benefit of the Registrar of Criminal Appeals and the Court of Appeal (Criminal Division), in the event of an application or appeal.

26K.20 The court is required to summarise the evidence relevant to the issues to such extent as is necessary (CrimPR 25.14(3)(a)).

26K.21 To assist the jury to focus on the issues during retirement, save where the case is so straightforward that it would be superfluous to do so, the judge should provide:

- A reminder of the issues;

- A summary of the nature of the evidence relating to each issue;
- A balanced account of the points raised by the parties; and
- Any outstanding directions.

It is not necessary for the judge to recount all relevant evidence or to rehearse all of the significant points raised by the parties.

26K.22 At the conclusion of the summing up, the judge should provide final directions to the jury on the need:

- For unanimity (in respect of each count and defendant, where relevant);
- To dismiss any thoughts of majority verdicts until further direction; and
- To select a juror to chair their discussions and speak on their behalf to the court.

H. A replacement practice direction on appeal notices

The replacement practice direction reads as follows:

CPD IX Appeal 39C: APPEAL NOTICES AND GROUNDS OF APPEAL

39C.1 The requirements for the service of notices of appeal and the time limits for doing so are as set out in CrimPR Part 39. The Court must be provided with an appeal notice as a single document which sets out the grounds of appeal. Advocates should not provide the Court with an advice addressed to lay or professional clients. Any appeal notice or grounds of appeal served on the Court will usually be provided to the respondent.

39C.2 Advocates should not settle grounds unless they consider that they are properly arguable. Grounds should be carefully drafted; the Court is not assisted by grounds of appeal which are not properly set out and particularised. Should leave to amend the grounds be granted, it is most unlikely that further grounds will be entertained.

39C.3 Where the appellant wants to appeal against conviction, transcripts must be identified in accordance with CrimPR 39.3(c). This includes specifying the date and time of transcripts in the notice of appeal. Accordingly, the date and time of the summing up should be provided, including both parts of a split summing up. Where relevant, the date and time of additional transcripts (such as rulings or early directions) should be provided. Similarly, any relevant written materials (such as route to verdict) should be identified.

Lord Chief Justice
23 March 2016