



Neutral Citation Number: [2013] EWCA Crim 2328

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2013

Before :

LORD CHIEF JUSTICE OF ENGLAND AND WALES

Criminal Practice Directions
Amendment No. 1



AMENDMENT NO. 1 TO THE CRIMINAL PRACTICE DIRECTIONS

This Practice Direction amends CPD General matters A, CPD General matters 5B, CPD Custody and bail 19C, CPD Sentencing F, CPD General application B of, and adds a new Practice Direction, a table of content and additional paragraph numbering to the Criminal Practice Directions which were handed down by the Lord Chief Justice on 3rd October 2013 and came into force on 7th October 2013.

It sets out:

- (a) a table of content;
- (b) additional paragraph numbering, for clarity;
- (c) an amendment to clarify the status of the Supreme Court Practice Direction on Devolution;
- (d) an amendment to clarify the legislation referred to in CPD General matters 5B: Access to information held by the Court;
- (e) an amendment to reflect correctly the SGC guidance on sentencing for Bail Act offences;
- (f) an amendment to create a presumption that Victim Personal Statements will be read to the court if the victim so requests, subject to judicial discretion;
- (g) an amendment to the mode of address for a Senior Circuit judge who is an Honorary Recorder;
- (h) a new Practice Direction to be included on Impact Statements for Businesses.

These amendments shall come into force with effect from 10th December 2013.

Table of Content

The following table of content shall be inserted at the beginning of the Practice Directions, before the heading 'General matters':

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CPD	I General matters	3C	Abuse of process stay applications
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CPD	II Preliminary proceedings	14A	Settling the indictment
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CPS	III Custody and bail	19A	Bail before sending for trial
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CPD	III Custody and bail	19H	Crown Court judge's certification of fitness to appeal and applications to the Crown Court for bail pending appeal
CPD	IV Disclosure	22A	Disclosure of unused material
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CPD	VI Trial	39A	Juries: introduction
CPD	VI Trial	39B	Juries: preliminary matters arising before jury service commences
CPD	VI Trial	39C	Juries: eligibility
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			December 2003
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CPD	XII General application	C	Availability of judgments given in the Court of Appeal and the High Court
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CPD	XII General application	F	Citation of Hansard

Paragraph numbering

The paragraph nomenclature for each Practice Direction shall be augmented by the addition of a Roman numeral to each division within the Practice Directions. (The divisions correspond in most part with those in the Criminal Procedure Rules.) The divisions shall be numbered as follows:

- I General matters
- II Preliminary proceedings
- III Custody and bail
- IV Disclosure
- V Evidence
- VI Trial
- VII Sentencing
- VIII Confiscation and related proceedings
- IX Contempt of court
- X Appeal
- XI Costs

- XII General application
- XIII Listing

By way of example, CPD Sentencing A: Pleas of guilty in the Crown Court should now be cited as ‘CPD VII Sentencing A: Pleas of guilty in the Crown Court’, and may be abbreviated to ‘CPD VII A’.

CPD I General matters A

For paragraph 2 of CPD I General matters A substitute:

- A.2 These Practice Directions replace the Consolidated Criminal Practice Direction of 8 July 2002 ([2002] 1 W.L.R. 2870; [2002] 2 Cr. App. R. 35), as amended, which is hereby revoked, with the exception of sections III.21, IV.31, IV.32, IV.33, IV.38 and IV.41.9. The Practice Directions, Practice Notes and Practice Statements listed in Annex A and Annex B of the 2002 consolidation, with the exception of Practice Direction: (Supreme Court) (Devolution Issues) [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486, are also revoked. Annexes D, E and F remain in force.

CPD I General matters 5B: Access to information held by the Court

For paragraph 11 of CPD I General matters 5B substitute:

- 5B.11 Documents likely to fall into this category are:
 - i. Opening notes
 - ii. Statements agreed under section 9 of the Criminal Justice Act 1967, including experts’ reports, if read in their entirety
 - iii. Admissions made under section 10 of the Criminal Justice Act 1967.

CPD III Custody and bail 19C: Sentencing for a Bail Act offence

For paragraphs 9 and 10 of CPD III Custody and bail 19C substitute:

- 19C.9 A defendant who commits an offence under section 6(1) or section 6(2) of the Bail Act 1976 commits an offence that stands apart from the proceedings in respect of which bail was granted. The seriousness of the offence can be reflected by an appropriate and generally separate penalty being imposed for the Bail Act offence.
- 19C.10 As noted above, there is a sentencing guideline on sentencing offenders for Bail Act offences and this must be followed unless it would be contrary to the interests of justice to do so. Where the appropriate penalty is a custodial sentence, consecutive sentences

should be imposed unless there are circumstances that make this inappropriate.

CPD VII Sentencing F: Victim Personal Statements

For CPD VII Sentencing F substitute:

- F.1 Victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'). The statement gives victims a formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. The court will take the statement into account when determining sentence. In some circumstances, it may be appropriate for relatives of a victim to make a VPS, for example where the victim has died as a result of the relevant criminal conduct. The revised Code of Practice for Victims of Crime, published on 29 October 2013 gives further information about victims' entitlements within the criminal justice system, and the duties placed on criminal justice agencies when dealing with victims of crime.
- F.2 When a police officer takes a statement from a victim, the victim should be told about the scheme and given the chance to make a VPS. The decision about whether or not to make a VPS is entirely a matter for the victim; no pressure should be brought to bear on their decision, and no conclusion should be drawn if they choose not to make such a statement. A VPS or a further VPS may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not normally be appropriate for a VPS to be made after the disposal of the case; there may be rare occasions between sentence and appeal when a further VPS may be necessary, for example, when the victim was injured and the final prognosis was not available at the date of sentence. However, VPS after disposal should be confined to presenting up to date factual material, such as medical information, and should be used sparingly.
- F.3 If the court is presented with a VPS the following approach, subject to the further guidance given by the Court of Appeal in *R v Perkins; Bennett; Hall* [2013] EWCA Crim 323, [2013] Crim L.R. 533, should be adopted:
- a) The VPS and any evidence in support should be considered and taken into account by the court, prior to passing sentence.
 - b) Evidence of the effects of an offence on the victim contained in the VPS or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the

defendant, if he or she is not represented. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim. The maker of a VPS may be cross-examined on its content.

- c) At the discretion of the court, the VPS may also be read aloud or played in open court, in whole or in part, or it may be summarised. If the VPS is to be read aloud, the court should also determine who should do so. In making these decisions, the court should take account of the victim's preferences, and follow them unless there is good reason not to do so; examples of this include the inadmissibility of the content or the potentially harmful consequences for the victim or others. Court hearings should not be adjourned solely to allow the victim to attend court to read the VPS. For the purposes of CPD I General matters 5B: Access to information held by the court, a VPS that is read aloud or played in open court in whole or in part should be considered as such, and no longer treated as a confidential document.
- d) In all cases it will be appropriate for a VPS to be referred to in the course of the sentencing hearing and/or in the sentencing remarks.
- e) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

CPD XII General application B: Modes of address and titles of judges and magistrates

For paragraph 1(c) of CPD XII General application B substitute:

- B.1
- (c) any Senior Circuit Judge who is an Honorary Recorder.

New Practice Direction on Impact Statements for Businesses

After CPD VII Sentencing H, the following to be added as ‘CPD VII Sentencing I: Impact Statements for Businesses’:

- I.1 Individual victims of crime are invited to make a statement, known as a Victim Personal Statement (‘VPS’), see CPD VII Sentencing F. If the victim, or one of the victims, is a business or enterprise (including charities but excluding public sector bodies), of any size, a nominated representative may make an Impact Statement for Business (‘ISB’). The ISB gives a formal opportunity for the court to be informed how a crime has affected a business. The court will take the statement into account when determining sentence. This does not prevent individual employees from making a VPS about the impact of the same crime on them as individuals. Indeed the ISB should be about the impact on the business exclusively, and the impact on any individual included within a VPS.
- I.2 When a police officer takes statements about the alleged offence, he or she should also inform the business about the scheme. An ISB may be made to the police at that time, or the ISB template may be downloaded from www.police.uk, completed and emailed or posted to the relevant police contact. Guidance on how to complete the form is available on www.police.uk and on the CPS website. There is no obligation on any business to make an ISB.
- I.3 An ISB or an updated ISB may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not be appropriate for an ISB to be made after disposal of the case but before an appeal.
- I.4 A business wishing to make an ISB should consider carefully who to nominate as the representative to make the statement on its behalf. A person making an ISB on behalf of a business, the nominated representative, must be authorised to do so on behalf of the business, either by nature of their position within the business, such as a director or owner, or by having been suitably authorised, such as by the owner or Board of Directors. The nominated representative must also be in a position to give admissible evidence about the impact of the crime on the business. This will usually be through first hand personal knowledge, or using business documents (as defined in section 117 of the Criminal Justice Act 2003). The most appropriate person will vary depending on the nature of the crime, and the size and structure of the business and may for example include a manager, director, chief executive or shop owner.
- I.5 If the nominated representative leaves the business before the case comes to court, he or she will usually remain the representative, as the ISB made by him or her will still provide the best evidence of the impact of the crime, and he or she could still be asked to attend court.

Nominated representatives should be made aware of the on-going nature of the role at the time of making the ISB.

- I.6 If necessary a further ISB may be provided to the police if there is a change in circumstances. This could be made by an alternative nominated representative. However, the new ISB will usually supplement, not replace, the original ISB and again must contain admissible evidence. The prosecutor will decide which ISB to serve on the defence as evidence, and any ISB that is not served in evidence will be included in the unused material and considered for disclosure to the defence.
- I.7 The ISB must be made in proper form, that is as a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. The maker of an ISB can be cross-examined on its content.
- I.8 The ISB and any evidence in support should be considered and taken into account by the court, prior to passing sentence. The statement should be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the statement may be summarised or read out in open court; the views of the business should be taken into account in reaching a decision.
- I.9 The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victims, including any business victim. Opinions as to what the sentence should be are therefore not relevant. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
- I.10 Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on a business.

Lord Chief Justice

Date: