CRIMINAL PRACTICE DIRECTIONS 2015

CRIMINAL PRACTICE DIRECTIONS 2015 [2015] EWCA CRIM 1567

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CONSOLIDATED WITH AMENDMENT NO.12 [2022] EWCA Crim 367

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TABLE OF CONTENTS

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION I

GENERAL MATTERS

CPD I General Matters

A

A.1 The Lord Chief Justice has power, including power under section 74 of the Courts Act 2003 and Part 1 of Schedule 2 to the Constitutional Reform Act 2005, to give directions as to the practice and procedure of the criminal courts. The following directions are given accordingly.

A.2 These Practice Directions replace the Criminal Practice Directions given on 7th October, 2013 [2013] EWCA Crim 1631; [2013] 1 WLR 3164 as amended by the Directions given on (i) 10th December, 2013 [2013] EWCA Crim 2328; [2014] 1 WLR 35, (ii) 23rd July, 2014 [2014] EWCA Crim 1569; [2014] 1 WLR 3001, (iii) 18th March, 2015 [2015] EWCA Crim 430; [2015] 1 WLR 1643; (iv) 16th July, 2015 [2015] EWCA Crim 1253; [2015] 1 WLR 3582; (v) 4th April, 2016 [2016] EWCA Crim 97; (vi) 16th November, 2016 [2016] EWCA Crim 1714; (vii) 31st January, 2017 [2017] EWCA Crim 30; (viii) 3rd April, 2017 [2017] EWCA Crim 310; (ix) 2nd October, 2017 [2017] EWCA Crim 1076; (x) 2nd April, 2018 EWCA Crim 516 and (xi) 1st October 2018 [2018] EWCA CRIM 1760; (xii) 1st April 2019 [2019] EWCA Crim 945; (xiii) 10th October 2019 [2019] EWCA Crim 1603;

A.4 Annexes D and E to the Consolidated Criminal Practice Direction of 8th July, 2002, [2002] 1 W.L.R. 2870; [2002] 2 Cr. App. R. 35, as amended, which set out forms for use in connection with the Criminal Procedure Rules, remain in force. See also paragraph I 5A of these Practice Directions.

A.5 These Practice Directions supplement many, but not all, Parts of the Criminal Procedure Rules, and include other directions about practice and procedure in the courts to which they apply. They are to be known as the Criminal Practice Directions 2015. They come into force on 5th October, 2015. They apply to all cases in all the criminal courts of England and Wales from that date.

A.6 Consequent on the rearrangement of the Criminal Procedure Rules in the Criminal Procedure Rules 2015, S.I. 2015/1490:

(a) the content of these Practice Directions is arranged to correspond. Within each division of these Directions the paragraphs are numbered to correspond with the associated Part of the Criminal Procedure Rules 2015. Compared with the Criminal Practice Directions given in 2013, as amended, the numbering and content of some divisions is amended consequentially, as shown in this table:

Derivations	
Divisions of 2015 Directions	*Divisions of 2013 Directions*
I General matters	I General matters; II Preliminary proceedings 16A – C

II Preliminary proceedings	II Preliminary proceedings 9A, 10A, 14A – B
III Custody and bail	III Custody and bail
IV Disclosure	IV Disclosure
V Evidence	V Evidence
VI Trial	VI Trial
VII Sentencing	VII Sentencing
VIII Confiscation and related proceedings [empty]	VIII Confiscation and related proceedings [empty]
IX Appeal	X Appeal
X Costs [Criminal Costs Practice Direction]	XI Costs [Criminal Costs Practice Direction]
XI Other proceedings	II Preliminary proceedings 6A, 17A – F; IX Contempt of court
XII General application	XII General application
XIII Listing	XIII Listing

(b) the text of these Practice Directions is amended:

(i) to bring up to date the cross-references to the Criminal Procedure Rules and to other paragraphs of these Directions which that text contains, and

(ii) to adopt the abbreviation of references to the Criminal Procedure Rules ('CrimPR') for which rule 2.3(2) of the Criminal Procedure Rules 2015 provides.

A.6 In all other respects, the content of the Criminal Practice Directions 2015 reproduces that of the Criminal Practice Directions 2013, as amended.

1A The overriding objective

CrimPR Part 1 The overriding objective

CPD I General matters 1A: THE OVERRIDING OBJECTIVE

1A.1 The presumption of innocence and an adversarial process are essential features of English and Welsh legal tradition and of the defendant's right to a fair trial. But it is no part of a fair trial that questions of guilt and innocence should be determined by procedural manoeuvres. On the contrary, fairness is best served when the issues between the parties are identified as early and as clearly as possible. As Lord Justice Auld noted, a criminal trial is not a game under which a guilty defendant should be provided with a sporting chance. It is a search for truth in accordance with the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculpate himself, the object being to convict the guilty and acquit the innocent.

1A.2 Further, it is not just for a party to obstruct or delay the preparation of a case for trial in order to secure some perceived procedural advantage, or to take unfair advantage of a mistake by someone else. If courts allow that to happen it damages public confidence in criminal justice. The Rules and the Practice Directions, taken together, make it clear that courts must not allow it to happen.

1A.3 The Criminal Procedure Rules and the Criminal Practice Directions are the law. Together they provide a code of current practice that is binding on the courts to which they are directed, and which promotes the consistent administration of justice. Participants must comply with the Rules and Practice Direction, and directions made by the court, and so it is the responsibility of the courts and those who participate in cases to be familiar with, and to ensure that these provisions are complied with.

3A Case management

CrimPR Part 3 Case management

CPD I General matters 3A: CASE MANAGEMENT

3A.1 CrimPR 1.1(2)(e) requires that cases be dealt with efficiently and expeditiously. CrimPR 3.2 requires the court to further the overriding objective by actively managing the case, for example:

a) When dealing with an offence which is triable only on indictment the court must ask the defendant whether he or she intends to plead guilty at the Crown Court (CrimPR 9.7(5));
b) On a guilty plea, the court must pass sentence at the earliest opportunity, in accordance with CrimPR 24.11(9)(a) (magistrates' courts) and 25.16(7)(a) (the Crown Court).

3A.2 Given these duties, magistrates' courts and the Crown Court therefore will proceed as described in paragraphs 3A.3 to 3A.28 below. The parties will be expected to have prepared in accordance with CrimPR 3.3(1) to avoid unnecessary and wasted hearings. They will be expected to have communicated with each other by the time of the first hearing; to report to the court on that communication at the first hearing; and to continue thereafter to communicate with each other and with the court officer, in accordance with CrimPR 3.3(2).

3A.3 There is a Preparation for Effective Trial form for use in the magistrates' courts, and a Plea and Trial Preparation Hearing form for use in the Crown Court, each of which must be used as appropriate in connection with CrimPR Part 3: see paragraph 5A.2 of these Practice Directions. Versions of those forms in pdf and Word, together with guidance notes, are available on the Criminal Procedure Rules pages of the Ministry of Justice website.

Case progression and trial preparation in magistrates' courts

3A.4 CrimPR 8.3 applies in all cases and requires the prosecutor to serve:

i. a summary of the circumstances of the offence;

ii. any account given by the defendant in interview, whether contained in that summary or in another document;
iii. any written witness statement or exhibit that the prosecutor then has available and considers material to plea or to the allocation of the case for trial or sentence;
iv. a list of the defendant's criminal record, if any; and
v. any available statement of the effect of the offence on a victim, a victim's family or others.

The details must include sufficient information to allow the defendant and the court at the first hearing to take an informed view:

i. on plea;
ii. on venue for trial (if applicable);
iii. for the purposes of case management; or
iv. for the purposes of sentencing (including committal for sentence, if applicable).

Defendant in custody

3A.5 If the defendant has been detained in custody after being charged with an offence which is indictable only or triable either way, at the first hearing a magistrates' court will proceed at once with the allocation of the case for trial, where appropriate, and, if so required, with the sending of the defendant to the Crown Court for trial. The court will be expected to ask for and record any indication of plea and issues for trial to assist the Crown Court.

3A.6 If the offence charged is triable only summarily, or if at that hearing the case is allocated for summary trial, the court will forthwith give such directions as are necessary, either (on a guilty plea) to prepare for sentencing, or for a trial.

Defendant on bail

3A.7 If the defendant has been released on bail after being charged, the case must be listed for the first hearing 14 days after charge, or the next available court date thereafter when the prosecutor anticipates a guilty plea which is likely to be sentenced in the magistrates' court. In cases where there is an anticipated not guilty plea or the case is likely to be sent or committed to the Crown Court for either trial or sentence, then it must be listed for the first hearing 28 days after charge or the next available court date thereafter.

Guilty plea in the magistrates' courts

3A.8 Where a defendant pleads guilty or indicates a guilty plea in a magistrates' court the court should consider whether a pre-sentence report – a stand down report if possible – is necessary.

Guilty plea in the Crown Court

3A.9 Where a magistrates' court is considering committal for sentence or the defendant has indicated an intention to plead guilty in a matter which is to be sent to the Crown Court, the magistrates' court should request the preparation of a pre-sentence report for the Crown Court's use if the magistrates' court considers that:

(a) there is a realistic alternative to a custodial sentence; or

(b) the defendant may satisfy the criteria for classification as a dangerous offender; or

(c) there is some other appropriate reason for doing so.

3A.10 When a magistrates' court sends a case to the Crown Court for trial and the defendant indicates an intention to plead guilty at the Crown Court, then that magistrates' court must set a date for a Plea and Trial Preparation Hearing at the Crown Court, in accordance with CrimPR 9.7(5)(a)(i).

Case sent for Crown Court trial: no indication of guilty plea

3A.11 In any case sent to the Crown Court for trial, other than one in which the defendant indicates an intention to plead guilty, the magistrates' court must set a date for a Plea and Trial Preparation Hearing, in accordance with CrimPR 9.7(5)(a)(ii). The Plea and Trial Preparation Hearing must be held within 28 days of sending, unless the standard directions of the Presiding Judges of the circuit direct otherwise. Paragraph 3A.16 below additionally applies to the arrangements for such hearings. A magistrates' court may give other directions appropriate to the needs of the case, in accordance with CrimPR 3.5(3), and in accordance with any standard directions issued by the Presiding Judges of the circuit.

Defendant on bail: anticipated not guilty plea

3A.12 Where the defendant has been released on bail after being charged, and where the prosecutor does not anticipate a guilty plea at the first hearing in a magistrates' court, then it is essential that the initial details of the prosecution case that are provided for that first hearing are sufficient to assist the court, in order to identify the real issues and to give appropriate directions for an effective trial (regardless of whether the trial is to be heard in the magistrates' court or the Crown Court). In these circumstances, unless there is good reason not to do so, the prosecution should make available the following material in advance of the first hearing in the magistrates' court:

(a) A summary of the circumstances of the offence(s) including a summary of any account given by the defendant in interview;
(b) Statements and exhibits that the prosecution has identified as being of importance for the purpose of plea or initial case management, including any relevant CCTV that would be relied upon at trial and any Streamlined Forensic Report;
(c) Details of witness availability, as far as they are known at that hearing;
(d) Defendant's criminal record;
(e) Victim Personal Statements if provided;
(f) An indication of any medical or other expert evidence that the prosecution is likely to adduce in relation to a victim or the defendant;
(g) Any information as to special measures, bad character or hearsay, where applicable.

3A.13 In addition to the material required by CrimPR Part 8, the information required by the Preparation for Effective Trial form must be available to be submitted at the first hearing, and the parties must complete that form, in accordance with the guidance published with it. Where there is to be a contested trial in a magistrates' court, that form includes directions and a timetable that will apply in every case unless the court otherwise orders.

3A.14 Nothing in paragraph 3A.12-3A.13 shall preclude the court from taking a plea pursuant to CrimPR 3.9(2)(b) at the first hearing and for the court to case manage as far as practicable under Part 3 CrimPR.

Exercise of magistrates' court's powers

3A.15 In accordance with CrimPR 9.1, sections 49, 51(13) and 51A(11) of the Crime and Disorder Act 1998, and sections 17E, 18(5) and 24D of the Magistrates' Courts Act 1980 a single justice can:

a) allocate and send for trial;
b) take an indication of a guilty plea (but not pass sentence);
c) take a not guilty plea and give directions for the preparation of trial including:
    i. timetable for the proceedings;
    ii. the attendance of the parties;
    iii. the service of documents;
    iv. the manner in which evidence is to be given.

Case progression and trial preparation in the Crown Court

Plea and Trial Preparation Hearing

3A.16 In a case in which a magistrates' court has directed a Plea and Trial Preparation Hearing, the period which elapses between sending for trial and the date of that hearing must be consistent within each circuit. In every case, the time allowed for the conduct of the Plea and Trial Preparation Hearing must be sufficient for effective trial preparation. It is expected in every case that an indictment will be lodged at least 7 days in advance of the hearing. Please see the Note to the Practice Direction.

3A.17 In a case in which the defendant, not having done so before, indicates an intention to plead guilty to his representative after being sent for trial but before the Plea and Trial Preparation Hearing, the defence representative will notify the Crown Court and the prosecution forthwith. The court will ensure there is sufficient time at the Plea and Trial Preparation Hearing for sentence and a Judge should at once request the preparation of a pre-sentence report if it appears to the court that either:

(a) there is a realistic alternative to a custodial sentence; or

(b) the defendant may satisfy the criteria for classification as a dangerous offender; or

(c) there is some other appropriate reason for doing so.

3A.18 If at the Plea and Trial Preparation Hearing the defendant pleads guilty and no pre-sentence report has been prepared, if possible the court should obtain a stand down report.

3A.19 Where the defendant was remanded in custody after being charged and was sent for trial without initial details of the prosecution case having been served, then at least 7 days before the Plea and Trial Preparation Hearing the prosecutor should serve, as a minimum, the material identified in paragraph 3A.12 above. If at the Plea and Trial Preparation Hearing the defendant does not plead guilty, the court will be expected to identify the issues in the case and give appropriate directions for an effective trial. Please see the Note to the Practice Direction.

3A.20 At the Plea and Trial Preparation Hearing, in addition to the material required by paragraph 3A.12 above, the prosecutor must serve sufficient evidence to enable the court to case manage effectively without the need for a further case management hearing, unless the case falls within paragraph 3A.21. In addition, the information required by the Plea and Trial Preparation Hearing form must be available to the court at that hearing, and it must have been discussed between the parties in advance. The prosecutor must provide details of the availability of likely prosecution witnesses so that a trial date can immediately be arranged if the defendant does not plead guilty.

Further case management hearing

3A.21 In accordance with CrimPR 3.13(1)(c), after the Plea and Trial Preparation Hearing there will be no further case management hearing before the trial unless:

(i) a condition listed in that rule is met; and
(ii) the court so directs, in order to further the overriding objective.

The directions to be given at the Plea and Trial Preparation Hearing therefore may include a direction for a further case management hearing, but usually will do so only in one of the following cases:

(a) Class 1 cases;
(b) Class 2 cases which carry a maximum penalty of 10 years or more;
(c) cases involving death by driving (whether dangerous or careless), or death in the workplace;
(d) cases involving a vulnerable witness;
(e) cases in which the defendant is a child or otherwise under a disability, or requires special assistance;
(f) cases in which there is a corporate or unrepresented defendant;
(g) cases in which the expected trial length is such that a further case management hearing is desirable and any case in which the trial is likely to last longer than four weeks;
(h) cases in which expert evidence is to be introduced;
(i) cases in which a party requests a hearing to enter a plea;
(j) cases in which an application to dismiss or stay has been made;
(k) cases in which arraignment has not taken place, whether because of an issue relating to fitness to plead, or abuse of process or sufficiency of evidence, or for any other reason;

(l) cases in which there are likely to be linked criminal and care directions in accordance with the 2013 Protocol.
(m) cases in which a substantial quantity of unused prosecution material has been disclosed, or will be disclosed, or in which the disclosure of such material raises complex questions of law or procedure.

3A.22 If a further case management hearing is directed, a defendant in custody will not usually be expected to attend in person, unless the court otherwise directs.

Compliance hearing

3A.23 If a party fails to comply with a case management direction, that party may be required to attend the court to explain the failure. Unless the court otherwise directs a defendant in custody will not usually be expected to attend. See paragraph 3A.26-3A.28 below.

Conduct of case progression hearings

3A.24 As far as possible, case progression should be managed without a hearing in the courtroom, using electronic communication in accordance with CrimPR 3.5(2)(d). Court staff should be nominated to conduct case progression as part of their role, in accordance with CrimPR 3.4(2). To aid effective communication the prosecution and defence representative should notify the court and provide details of who shall be dealing with the case at the earliest opportunity.

Completion of Effective Trial Monitoring form

3A.25 It is imperative that the Effective Trial Monitoring form (as devised and issued by Her Majesty's Courts and Tribunals Service) is accurately completed by the parties for all cases that have been listed for trial. Advocates must engage with the process by providing the relevant details and completing the form.

Compliance courts

3A.26 To ensure effective compliance with directions of the courts made in accordance with the Criminal Procedure Rules and the overriding objective, courts should maintain a record whenever a party to the proceedings has failed to comply with a direction made by the court. The parties may have to attend a hearing to explain any lack of compliance.

3A.27 These hearings may be conducted by live link facilities or via other electronic means, as the court may direct.

3A.28 It will be for the Presiding Judges, Resident Judge and Justices' Clerks to decide locally how often compliance courts should be held, depending on the scale and nature of the problem at each court centre.

Note to the Practice Direction

In 3A.16 and 3A.19 the reference to "at least 7 days" in advance of the hearing is necessitated by the fact that, for the time being, different circuits have different timescales for the Plea and Trial Preparation Hearing. Had this not been so, the paragraphs would have been drafted forward from the date of sending rather than backwards from the date of the Plea and Trial Preparation Hearing.

3B Pagination and indexing of served evidence

CPD I General matters 3B: PAGINATION AND INDEXING OF SERVED EVIDENCE

3B.1 The following directions apply to matters before the Crown Court, where

(a) there is an application to prefer a bill of indictment in relation to the case;

(b) a person is sent for trial under section 51 of the Crime and Disorder Act 1998 (sending cases to the Crown Court), to the service of copies of the documents containing the evidence on which the charge or charges are based under Paragraph 1 of Schedule 3 to that Act; or

(c) a defendant wishes to serve evidence.

3B.2 A party who serves documentary evidence in the Crown Court should:

(a) paginate each page in any bundle of statements and exhibits sequentially;

(b) provide an index to each bundle of statements produced including the following information:

i. the name of the case;

ii. the author of each statement;

iii. the start page number of the witness statement;

iv. the end page number of the witness statement.

(c) provide an index to each bundle of documentary and pictorial exhibits produced, including the following information:

i. the name of the case

ii. the exhibit reference;

iii. a short description of the exhibit;

iv. the start page number of the exhibit;

v. the end page number of the exhibit;

vi. where possible, the name of the person producing the exhibit should be added.

3B.3 Where additional documentary evidence is served, a party should paginate following on from the last page of the previous bundle or in a logical and sequential manner. A party should also provide notification of service of any amended index.

3B.4 The prosecution must ensure that the running total of the pages of prosecution evidence is easily identifiable on the most recent served bundle of prosecution evidence.

3B.5 For the purposes of these directions, the number of pages of prosecution evidence served on the court includes all

(a) witness statements;

(b) documentary and pictorial exhibits;

(c) records of interviews with the defendant; and

(d) records of interviews with other defendants which form part of the served prosecution documents or which are included in any notice of additional evidence,

but does not include any document provided on CD-ROM or by other means of electronic communication.

3C Abuse of process stay applications

CPD I General matters 3C: ABUSE OF PROCESS STAY APPLICATIONS

3C.1 In all cases where a defendant in the Crown Court proposes to make an application to stay an indictment on the grounds of abuse of process, written notice of such application must be given to the prosecuting authority and to any co-defendant as soon as practicable after the defendant becomes aware of the grounds for doing so and not later than 14 days before the date fixed or warned for trial ("the relevant date"). Such notice must:

(a) give the name of the case and the indictment number;

(b) state the fixed date or the warned date as appropriate;

(c) specify the nature of the application;

(d) set out in numbered sub-paragraphs the grounds upon which the application is to be made;

(e) be copied to the chief listing officer at the court centre where the case is due to be heard.

3C.2 Any co-defendant who wishes to make a like application must give a like notice not later than seven days before the relevant date, setting out any additional grounds relied upon.

3C.3 In relation to such applications, the following automatic directions shall apply:

(a) the advocate for the applicant(s) must lodge with the court and serve on all other parties a skeleton argument in support of the application, at least five clear working days before the relevant date. If reference is to be made to any document not in the existing trial documents, a paginated and indexed bundle of such documents is to be provided with the skeleton argument;

(b) the advocate for the prosecution must lodge with the court and serve on all other parties a responsive skeleton argument at least two clear working days before the relevant date, together with a supplementary bundle if appropriate.

3C.4 Paragraphs XII D.17 to D.23 of these Practice Directions set out the general requirements for skeleton arguments. All skeleton arguments must specify any propositions of law to be advanced (together with the authorities relied upon in support, with paragraph references to passages relied upon) and, where appropriate, include a chronology of events and a list of dramatis personae. In all instances where reference is made to a document, the reference in the trial documents or supplementary bundle is to be given.

3C.5 The above time limits are minimum time limits. In appropriate cases, the court will order longer lead times. To this end, in all cases where defence advocates are, at the time of the preliminary hearing or as soon as practicable after the case has been sent, considering the possibility of an abuse of process application, this must be raised with the judge dealing with the matter, who will order a different timetable if appropriate, and may wish, in any event, to give additional directions about the conduct of the application. If the trial judge has not been identified, the matter should be raised with the Resident Judge.

3D Vulnerable people in the Courts

CPD I General matters 3D: VULNERABLE PEOPLE IN THE COURTS

3D.1 In respect of eligibility for special measures, 'vulnerable' and 'intimidated' witnesses are defined in sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009); 'vulnerable' includes those under 18 years of age and people with a mental disorder or learning disability; a physical disorder or disability; or who are likely to suffer fear or distress in giving evidence because of their own circumstances or those relating to the case.

3D.2 However, many other people giving evidence in a criminal case, whether as a witness or defendant, may require assistance: the court is required to take 'every reasonable step' to encourage and facilitate the attendance of witnesses and to

facilitate the participation of any person, including the defendant (CrimPR 3.9(3)(a) and (b)). This includes enabling a witness or defendant to give their best evidence, and enabling a defendant to comprehend the proceedings and engage fully with his or her defence. The pre-trial and trial process should, so far as necessary, be adapted to meet those ends. Regard should be had to the welfare of a young defendant as required by section 44 of the Children and Young Persons Act 1933, and generally to Parts 1 and 3 of the Criminal Procedure Rules (the overriding objective and the court's powers of case management).

3D.3 Under Part 3 of the Rules, the court must identify the needs of witnesses at an early stage (CrimPR 3.2(2)(b)) and may require the parties to identify arrangements to facilitate the giving of evidence and participation in the trial (CrimPR 3.11(c)(iv) and (v)). There are various statutory special measures that the court may utilise to assist a witness in giving evidence. CrimPR Part 18 gives the procedures to be followed. Courts should note the 'primary rule' which requires the court to give a direction for a special measure to assist a child witness or qualifying witness and that in such cases an application to the court is not required (CrimPR 18.9).

3D.4 Court of Appeal decisions on this subject include a judgment from the Lord Chief Justice, Lord Judge in *R v Cox* [2012] EWCA Crim 549, [2012] 2 Cr. App. R. 6; *R v Wills* [2011] EWCA Crim 1938, [2012] 1 Cr. App. R. 2; and *R v E* [2011] EWCA Crim 3028, [2012] Crim L.R. 563.

3D.5 In *R v Wills*, the Court endorsed the approach taken by the report of the Advocacy Training Council (ATC) 'Raising the Bar: the Handling of Vulnerable Witnesses, Victims and Defendants in Court' (2011). The report includes and recommends the use of 'toolkits' to assist advocates as they prepare to question vulnerable people at court:

http://www.advocacytrainingcouncil.org/vulnerable-witnesses/raising-the-bar

3D.6 Further toolkits are available through the Advocate's Gateway which is managed by the ATC's Management Committee:

http://www.theadvocatesgateway.org/

3D.7 These toolkits represent best practice. Advocates should consult and follow the relevant guidance whenever they prepare to question a young or otherwise vulnerable witness or defendant. Judges may find it helpful to refer advocates to this material and to use the toolkits in case management.

3D.8 'Achieving Best Evidence in Criminal Proceedings' (Ministry of Justice 2011) describes best practice in preparation for the investigative interview and trial:

http://www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf

3E Ground rules hearings to plan the questioning of a vulnerable witness or defendant

CPD I General matters 3E: GROUND RULES HEARINGS TO PLAN THE QUESTIONING OF A VULNERABLE WITNESS OR DEFENDANT

3E.1 The judiciary is responsible for controlling questioning. Over-rigorous or repetitive cross-examination of a child or vulnerable witness should be stopped. Intervention by the judge, magistrates or intermediary (if any) is minimised if questioning, taking account of the individual's communication needs, is discussed in advance and ground rules are agreed and adhered to.

3E.2 Discussion of ground rules is required in all intermediary trials where they must be discussed between the judge or magistrates, advocates and intermediary before the witness gives evidence. The intermediary must be present but is not required to take the oath (the intermediary's declaration is made just before the witness gives evidence).

3E.3 Discussion of ground rules is good practice, even if no intermediary is used, in all young witness cases and in other cases where a witness or defendant has communication needs. Discussion before the day of trial is preferable to give advocates time to adapt their questions to the witness's needs. It may be helpful for a trial practice note of boundaries to be created at the end of the discussion. The judge may use such a document in ensuring that the agreed ground rules are complied with.

3E.4 All witnesses, including the defendant and defence witnesses, should be enabled to give the best evidence they can. In relation to young and/or vulnerable people, this may mean departing radically from traditional cross-examination. The form and extent of appropriate cross-examination will vary from case to case. For adult non vulnerable witnesses an advocate will usually put his case so that the witness will have the opportunity of commenting upon it and/or answering it. When the witness is young or otherwise vulnerable, the court may dispense with the normal practice and impose restrictions on the advocate 'putting his case' where there is a risk of a young or otherwise vulnerable witness failing to understand, becoming distressed or acquiescing to leading questions. Where limitations on questioning are necessary and appropriate, they must be clearly defined. The judge has a duty to ensure that they are complied with and should explain them to the jury and the reasons for them. If the advocate fails to comply with the limitations, the judge should give relevant directions to the jury when that occurs and prevent further questioning that does not comply with the ground rules settled upon in advance. Instead of commenting on inconsistencies during cross-examination, following discussion between the judge and the advocates, the advocate or judge may point out important inconsistencies after (instead of during) the witness's evidence. The judge should also remind the jury of these during summing up. The judge should be alert to alleged inconsistencies that are not in fact inconsistent, or are trivial.

3E.5 If there is more than one defendant, the judge should not permit each advocate to repeat the questioning of a vulnerable witness. In advance of the trial, the advocates should divide the topics between them, with the advocate for the first defendant leading the questioning, and the advocate(s) for the other defendant(s)

asking only ancillary questions relevant to their client's case, without repeating the questioning that has already taken place on behalf of the other defendant(s).

3E.6 In particular in a trial of a sexual offence, 'body maps' should be provided for the witness' use. If the witness needs to indicate a part of the body, the advocate should ask the witness to point to the relevant part on the body map. In sex cases, judges should not permit advocates to ask the witness to point to a part of the witness' own body. Similarly, photographs of the witness' body should not be shown around the court while the witness is giving evidence.

3F Intermediaries

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). It will rarely exercise its inherent powers to direct appointment

of an intermediary but where a defendant is vulnerable or for some other reason experiences communication or hearing difficulties, such that he or she needs more help to follow the proceedings than her or his legal representatives readily can give having regard to their other functions on the defendant's behalf, then the court should consider sympathetically any application for the defendant to be accompanied throughout the trial by a support worker or other appropriate companion who can provide that assistance. This is consistent with CrimPR 3.9(3)(b) (see paragraph 3D.2 above); consistent with the observations in R v Cox (see paragraph 3D.4 above), R (OP) v Ministry of Justice [2014] EWHC 1944 (Admin) and R v Rashid [2017] EWCA Crim 2; and consistent with the arrangements contemplated at paragraph 3G.8 below.

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, keeping in mind paragraph 3F.12 above.

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/1groundrulesheargingsandthefairtreatmentofvulnerablepeopleincourt060315.pdf
- https://www.theadvocatesgateway.org/images/toolkits/2-general-principles-from-research-policy-and-guidance-planning-to-question-a-vulnerable-person-or-someone-with-communication-needs-141215.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.

3G Vulnerable defendants

CPD I General matters 3G: VULNERABLE DEFENDANTS

Before the trial, sentencing or appeal

3G.1 If a vulnerable defendant, especially one who is young, is to be tried jointly with one who is not, the court should consider at the plea and case management hearing, or at a case management hearing in a magistrates' court, whether the vulnerable defendant should be tried on his own, but should only so order if satisfied that a fair trial cannot be achieved by use of appropriate special measures or other support for the defendant. If a vulnerable defendant is tried jointly with one who is not, the court should consider whether any of the modifications set out in this direction should apply in the circumstances of the joint trial and, so far as practicable, make orders to give effect to any such modifications.

3G.2 It may be appropriate to arrange that a vulnerable defendant should visit, out of court hours and before the trial, sentencing or appeal hearing, the courtroom in which that hearing is to take place so that he or she can familiarise him or herself with it.

3G.3 Where an intermediary is being used to help the defendant to communicate at court, the intermediary should accompany the defendant on his or her pre-trial visit. The visit will enable the defendant to familiarise him or herself with the layout of the court, and may include matters such as: where the defendant will sit, either in the dock or otherwise; court officials (what their roles are and where they sit); who else might be in the court, for example those in the public gallery and press box; the location of the witness box; basic court procedure; and the facilities available in the court.

3G.4 If the defendant's use of the live link is being considered, he or she should have an opportunity to have a practice session.

3G.5 If any case against a vulnerable defendant has attracted or may attract widespread public or media interest, the assistance of the police should be enlisted to try and ensure that the defendant is not, when attending the court, exposed to intimidation, vilification or abuse. Section 41 of the Criminal Justice Act 1925 prohibits the taking of photographs of defendants and witnesses (among others) in the court building or in its precincts, or when entering or leaving those precincts. A direction reminding media representatives of the prohibition may be

appropriate. The court should also be ready at this stage, if it has not already done so, where relevant to make a reporting restriction under section 39 of the Children and Young Persons Act 1933 or, on an appeal to the Crown Court from a youth court, to remind media representatives of the application of section 49 of that Act.

3G.6 The provisions of the Practice Direction accompanying Part 6 should be followed.

The trial, sentencing or appeal hearing

3G.7 Subject to the need for appropriate security arrangements, the proceedings should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level.

3G.8 Subject again to the need for appropriate security arrangements, a vulnerable defendant, especially if he is young, should normally, if he wishes, be free to sit with members of his family or others in a like relationship, and with some other suitable supporting adult such as a social worker, and in a place which permits easy, informal communication with his legal representatives. The court should ensure that a suitable supporting adult is available throughout the course of the proceedings.

3G.9 It is essential that at the beginning of the proceedings, the court should ensure that what is to take place has been explained to a vulnerable defendant in terms he or she can understand and, at trial in the Crown Court, it should ensure in particular that the role of the jury has been explained. It should remind those representing the vulnerable defendant and the supporting adult of their responsibility to explain each step as it takes place and, at trial, explain the possible consequences of a guilty verdict and credit for a guilty plea. The court should also remind any intermediary of the responsibility to ensure that the vulnerable defendant has understood the explanations given to him/her. Throughout the trial the court should continue to ensure, by any appropriate means, that the defendant understands what is happening and what has been said by those on the bench, the advocates and witnesses.

3G.10 A trial should be conducted according to a timetable which takes full account of a vulnerable defendant's ability to concentrate. Frequent and regular breaks will often be appropriate. The court should ensure, so far as practicable, that the whole trial is conducted in clear language that the defendant can understand and that evidence in chief and cross-examination are conducted using questions that are short and clear. The conclusions of the 'ground rules' hearing should be followed, and advocates should use and follow the 'toolkits' as discussed above.

3G.11 A vulnerable defendant who wishes to give evidence by live link, in accordance with section 33A of the Youth Justice and Criminal Evidence Act 1999, may apply for a direction to that effect; the procedure in CrimPR 18.14 to 18.17 should be followed. Before making such a direction, the court must be satisfied that it is in the interests of justice to do so and that the use of a live link would enable the defendant to participate more effectively as a witness in the proceedings. The direction will need to deal with the practical arrangements to be made, including the identity of the person or persons who will accompany him or her.

3G.12 In the Crown Court, the judge should consider whether robes and wigs should be worn, and should take account of the wishes of both a vulnerable defendant and any vulnerable witness. It is generally desirable that those responsible for the security of a vulnerable defendant who is in custody, especially if he or she is young, should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason.

3G.13 The court should be prepared to restrict attendance by members of the public in the courtroom to a small number, perhaps limited to those with an immediate and direct interest in the outcome. The court should rule on any challenged claim to attend. However, facilities for reporting the proceedings (subject to any restrictions under section 39 or 49 of the Children and Young Persons Act 1933) must be provided. The court may restrict the number of reporters attending in the courtroom to such number as is judged practicable and desirable. In ruling on any challenged claim to attend in the courtroom for the purpose of reporting, the court should be mindful of the public's general right to be informed about the administration of justice.

3G.14 Where it has been decided to limit access to the courtroom, whether by reporters or generally, arrangements should be made for the proceedings to be relayed, audibly and if possible visually, to another room in the same court complex to which the media and the public have access if it appears that there will be a need for such additional facilities. Those making use of such a facility should be reminded that it is to be treated as an extension of the courtroom and that they are required to conduct themselves accordingly.

3H Wales and the Welsh Language: Devolution issues

CPD I General matters 3H: WALES AND THE WELSH LANGUAGE: DEVOLUTION ISSUES

3H.1 These are the subject of Practice Direction: (Supreme Court) (Devolution Issues) [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486, to which reference should be made.

3J Wales and the Welsh Language: Application for evidence to be given in Welsh

CPD I General matters 3J: WALES AND THE WELSH LANGUAGE: APPLICATIONS FOR EVIDENCE TO BE GIVEN IN WELSH

3J.1 If a defendant in a court in England asks to give or call evidence in the Welsh language, the case should not be transferred to Wales. In ordinary circumstances, interpreters can be provided on request.

3K Wales and the Welsh Language: Use of the Welsh Language in Courts in Wales

CPD I General matters 3K: WALES AND THE WELSH LANGUAGE: USE OF THE WELSH LANGUAGE IN COURTS IN WALES

3K.1 The purpose of this direction is to reflect the principle of the Welsh Language Act 1993 that, in the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality.

General

3K.2 It is the responsibility of the legal representatives in every case in which the Welsh language may be used by any witness or party, or in any document which may be placed before the court, to inform the court of that fact, so that appropriate arrangements can be made for the listing of the case.

3K.3 Any party or witness is entitled to use Welsh in a magistrates' court in Wales without giving prior notice. Arrangements will be made for hearing such cases in accordance with the 'Magistrates' Courts' Protocol for Listing Cases where the Welsh Language is used' (January 2008) which is available on the Judiciary's website:

https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Protocols/protocol_listing_cases_welsh_lang.pdf

See also CrimPR 24.14.

3K.4 If the possible use of the Welsh language is known at the time of sending or appeal to the Crown Court, the court should be informed immediately after sending or when the notice of appeal is lodged. Otherwise, the court should be informed as soon as the possible use of the Welsh language becomes known.

3K.5 If costs are incurred as a result of failure to comply with these directions, a wasted costs order may be made against the defaulting party and / or his legal representatives.

3K.6 The law does not permit the selection of jurors in a manner which enables the court to discover whether a juror does or does not speak Welsh, or to secure a jury whose members are bilingual, to try a case in which the Welsh language may be used.

Preliminary and plea and case management hearings

3K.7 An advocate in a case in which the Welsh language may be used must raise that matter at the preliminary and/or the plea and case management hearing and endorse details of it on the advocates' questionnaire, so that appropriate directions may be given for the progress of the case.

Listing

3K.8 The listing officer, in consultation with the resident judge, should ensure that a case in which the Welsh language may be used is listed

(a) wherever practicable before a Welsh speaking judge, and

(b) in a court in Wales with simultaneous translation facilities.

Interpreters

3K.9 Whenever an interpreter is needed to translate evidence from English into Welsh or from Welsh into English, the court listing officer in whose court the case is to be heard shall contact the Welsh Language Unit who will ensure the attendance of an accredited interpreter.

Jurors

3K.10 The jury bailiff, when addressing the jurors at the start of their period of jury service, shall inform them that each juror may take an oath or affirm in Welsh or English as he wishes.

3K.11 After the jury has been selected to try a case, and before it is sworn, the court officer swearing in the jury shall inform the jurors in open court that each juror may take an oath or affirm in Welsh or English as he wishes. A juror who takes the oath or affirms in Welsh should not be asked to repeat it in English.

3K.12 Where Welsh is used by any party or witness in a trial, an accredited interpreter will provide simultaneous translation from Welsh to English for the jurors who do not speak Welsh. There is no provision for the translation of evidence from English to Welsh for a Welsh speaking juror.

3K.13 The jury's deliberations must be conducted in private with no other person present and therefore no interpreter may be provided to translate the discussion for the benefit of one or more of the jurors.

Witnesses

3K.14 When each witness is called, the court officer administering the oath or affirmation shall inform the witness that he may be sworn or affirm in Welsh or English, as he wishes. A witness who takes the oath or affirms in Welsh should not be asked to repeat it in English.

Opening / closing of Crown Courts

3K.15 Unless it is not reasonably practicable to do so, the opening and closing of the court should be performed in Welsh and English.

Role of Liaison Judge

3K.16 If any question or problem arises concerning the implementation of these directions, contact should in the first place be made with the Liaison Judge for the Welsh language through the Wales Circuit Office:

HMCTS WALES / GLITEM CYMRU

3rd Floor, Churchill House / 3ydd Llawr Tŷ Churchill

Churchill Way / Ffordd Churchill

Cardiff / Caerdydd

CF10 2HH

029 2067 8300

3L Security of Prisoners at Court

CPD I General Matters 3L: SECURITY OF PRISONERS AT COURT

3L.1 High-risk prisoners identified to the court as presenting a significant risk of escape, violence in court or danger to those in the court and its environs, and to the public at large, will as far as possible, have administrative and remand appearances listed for disposal by way of live link. They will have priority for the use of video equipment.

3L.2 In all other proceedings that require the appearance in person of a high-risk prisoner, the proceedings will be listed at an appropriately secure court building and in a court with a secure (enclosed or ceiling-high) dock.

3L.3 Where a secure dock or live link is not available the court will be asked to consider an application for additional security measures, which may include:

(a) the use of approved restraints (but see below at 3L.6);

(b) the deployment of additional escort staff;

(c) securing the court room for all or part of the proceedings;

(d) in exceptional circumstances, moving the hearing to a prison.

3L.4 National Offender Management Service (NOMS) will be responsible for providing the assessment of the prisoner and it is accepted that this may change at short notice. NOMS must provide notification to the listing officer of all Category A prisoners, those on the Escape-list and Restricted Status prisoners or other prisoners who have otherwise been assessed as presenting a significant risk of violence or harm. There is a presumption that all prisoners notified as high-risk will be allocated a hearing by live link and/or secure dock facilities. Where the court cannot provide a secure listing, the reasons should be provided to the establishment so that alternative arrangements can be considered.

Applications for use of approved restraints

3L.5 It is the duty of the court to decide whether a prisoner who appears before them should appear in restraints or not. Their decision must comply with the requirements of the European Convention on Human Rights, particularly Article 3, which prohibits degrading treatment, see Ranniman v Finland (1997) 26 EHRR 56.

3L.6 No prisoner should be handcuffed in court unless there are reasonable grounds for apprehending that he will be violent or will attempt to escape. If an application is made, it must be entertained by the court and a ruling must be given. The defence should be given the opportunity to respond to the application: proceeding in the absence of the defendant or his representative may give rise to an issue under Article 6(1) of the European Convention on Human Rights: R v Rollinson (1996) 161 JP 107, CA. If an application is to be made ex parte then that application should be made inter partes and the defence should be given an opportunity to respond.

Additional security measures

3L.7 It may be in some cases that additional dock officers are deployed to mitigate the risk that a prisoner presents. When the nature of the risk is so serious that increased deployment will be insufficient or would in itself be so obtrusive as to prejudice a fair trial, then the court may be required to consider the following measures:

(a) reconsider the case for a live link hearing, including transferring the case to a court where the live link is available;

(b) transfer the case to an appropriately secure court;

(c) the use of approved restraints on the prisoner for all or part of the proceedings;

(d) securing the court room for all or part of the proceedings; and

(e) the use of (armed) police in the court building.

3L.8 The establishment seeking the additional security measures will submit a Court Management Directions Form setting out the evidence of the prisoners identified risk of escape or violence and requesting the courts approval of security measures to mitigate that risk. This must be sent to the listing officer along with current, specific and credible evidence that the security measures are both necessary and proportionate to the identified risk and that the risk cannot be managed in any other way.

3L.9 If the court is asked to consider transfer of the case, then this must be in accordance with the Listing and Allocation Practice Direction XIII F.11-F.13 post. The listing officer will liaise with the establishment, prosecution and the defence to ensure the needs of the witnesses are taken into account.

3L.10 The Judge who has conduct of the case must deal with any application for the use of restraints or any other security measure and will hear representations from the

Crown Prosecution Service and the defence before proceeding. The application will only be granted if:

(a) there are good grounds for believing that the prisoner poses a significant risk of trying to escape from the court (beyond the assumed motivation of all prisoners to escape) and/or risk of serious harm towards those persons in court or the public generally should an escape attempt be successful; and

(b) where there is no other viable means of preventing escape or serious harm.

High-risk prisoners giving evidence from the witness box

3L.11 High-risk prisoners giving evidence from the witness box may pose a significant security risk. In circumstances where such prisoners are required to move from a secure dock to an insecure witness box, an application may be made for the court to consider the use of additional security measures including:

(a) the use of approved restraints;

(b) the deployment of additional escort staff or police in the courtroom or armed police in the building. The decision to deploy an armed escort is for the Chief Inspector of the relevant borough: the decision to allow the armed escort in or around the court room is for the Senior Presiding Judge (see below);

(c) securing the courtroom for all or part of the proceedings;

(d) giving evidence from the secure dock; and

(e) use of live link if the prisoner is not the defendant.

3M Procedure for application for armed police presence in the Royal Courts of Justice, Crown Courts and magistrates' court buildings

CPD I General Matters 3M: PROCEDURE FOR APPLICATIONS FOR ARMED POLICE PRESENCE IN THE ROYAL COURTS OF JUSTICE, CROWN COURTS AND MAGISTRATES' COURT BUILDINGS

3M.1 This Practice Direction sets out the procedure for the making and handling of applications for authorisation for the presence of armed police officers within the precincts of any Crown Court and magistrates' court buildings at any time. It applies to an application to authorise the carriage of firearms or tasers in court for security purposes. It does not apply to officers who are carrying CS spray or PAVA incapacitant spray, which is included in the standard equipment issued to officers in some forces and therefore no separate authorisation is required for its carriage in court. Likewise, no separate authorisation is required for officers carrying tasers as part of their operational equipment where they are attending court on routine court business or to give evidence. If, however, the carrying of tasers is part of a tactical deployment for security purposes then an application must be made in accordance with the following provisions to ensure the court is aware of the arrangements sought.

3M.2 This Practice Direction applies to all cases in England and Wales in which a police unit intends to request authorisation for the presence of armed police officers in the Crown Court or in the magistrates' court buildings at any time and including during the delivery of prisoners to court.

3M.3 This Practice Direction allows applications to be made for armed police presence in the Royal Courts of Justice.

Emergency situations

3M.4 This Practice Direction does not apply in an emergency situation. In such circumstances, the police must be able to respond in a way in which their professional judgment deems most appropriate.

Designated court centres

3M.5 Applications may only be made for armed police presence in the designated Crown Court and magistrates' court centres (see below). This list may be revised from time to time in consultation with the Association of Chief Police Officers (ACPO) and HMCTS. It will be reviewed at least every five years in consultation with ACPO armed police secretariat and the Presiding Judges.

3M.6 The Crown Court centres designated for firearms deployment are:

(a) Northern Circuit: Carlisle, Chester, Liverpool, Preston, Manchester Crown Square & Manchester Minshull Street.

(b) North Eastern Circuit: Bradford, Leeds, Newcastle upon Tyne, Sheffield, Teesside and Kingston-upon-Hull.

(c) Western Circuit: Bristol, Winchester and Exeter.

(d) South Eastern Circuit (not including London): Canterbury, Chelmsford, Ipswich, Luton, Maidstone, Norwich, Reading and St Albans.

(e) South Eastern Circuit (London only): Central Criminal Court, Woolwich, Kingston and Snaresbrook.

(f) Midland Circuit: Birmingham, Northampton, Nottingham and Leicester.

(g) Wales Circuit: Cardiff, Swansea and Caernarfon.

3M.7 The magistrates' courts designated for firearms deployment are:

(a) South Eastern Circuit (London only): Westminster Magistrates' Court and Belmarsh Magistrates' Court.

Preparatory work prior to applications in all cases

3M.8 Prior to the making of any application for armed transport of prisoners or the presence of armed police officers in the court building, consideration must be given to making use of prison video link equipment to avoid the necessity of prisoners' attendance at court for the hearing in respect of which the application is to be made.

3M.9 Notwithstanding their designation, each requesting officer will attend the relevant court before an application is made to ensure that there have been no

changes to the premises and that there are no circumstances that might affect security arrangements.

Applying in the Royal Courts of Justice

3M.10 All applications should be sent to the Listing Office of the Division in which the case is due to appear. The application should be sent by email if possible and must be on the standard form.

3M.11 The Listing Office will notify the Head of Division, providing a copy of the email and any supporting evidence. The Head of Division may ask to see the senior police office concerned.

3M.12 The Head of Division will consider the application. If it is refused, the application fails and the police must be notified.

3M.13 In the absence of the Head of Division, the application should be considered by the Vice-President of the Division.

3M.14 The relevant Court Office will be notified of the decision and that office will immediately inform the police by telephone. The decision must then be confirmed in writing to the police.

Applying to the Crown Court

3M.15 All applications should be sent to the Cluster Manager and should be sent by email if possible and must be on the standard form.

3M.16 The Cluster Manager will notify the Presiding Judge on the circuit and the Resident Judge by email, providing a copy of the form and any supporting evidence. The Presiding Judge may ask to see the senior police officer concerned.

3M.17 The Presiding Judge will consider the application. If it is refused the application fails and the police must be informed.

3M.18 If the Presiding Judge approves the application it should be forwarded to the secretary in the Senior Presiding Judge's Office. The Senior Presiding Judge will make the final decision. The Presiding Judge will receive written confirmation of that decision.

3M.19 The Presiding Judge will notify the Cluster Manager and the Resident Judge of the decision. The Cluster Manager will immediately inform the police of the decision by telephone. The decision must then be confirmed in writing to the police.

Urgent applications to the Crown Court

3M.20 If the temporary deployment of armed police arises as an urgent issue and a case would otherwise have to be adjourned; or if the trial judge is satisfied that there is a serious risk to public safety, then the Resident Judge will have a discretion to

agree such deployment without having obtained the consent of a Presiding Judge or the Senior Presiding Judge. In such a case:

(a) the Resident Judge should assess the facts and agree the proposed solution with a police officer of at least Superintendent level. That officer should agree the approach with the Firearms Division of the police.

(b) if the proposed solution involves the use of armed police officers, the Resident Judge must try to contact the Presiding Judge and/or the Senior Presiding Judge by email and telephone. The Cluster Manager should be informed of the situation.

(c) if the Resident Judge cannot obtain a response from the Presiding Judge or the Senior Presiding Judge, the Resident Judge may grant the application if satisfied:

(i) that the application is necessary;

(ii) that without such deployment there would be a significant risk to public safety; and

(iii) that the case would have to be adjourned at significant difficulty or inconvenience.

3M.21 The Resident Judge must keep the position under continual review, to ensure that it remains appropriate and necessary. The Resident Judge must make continued efforts to contact the Presiding Judge and the Senior Presiding Judge to notify them of the full circumstances of the authorisation.

Applying to the magistrates' courts

3M.22 All applications should be directed, by email if possible, to the Office of the Chief Magistrate, at Westminster Magistrates' Court and must be on the standard form.

3M.23 The Chief Magistrate should consider the application and, if approved, it should be forwarded to the Senior Presiding Judge's Office. The Senior Presiding Judge will make the final decision. The Chief Magistrate will receive written confirmation of that decision and will then notify the requesting police officer and, where authorisation is given, the affected magistrates' court of the decision.

Urgent applications in the magistrates' courts

3M.24 If the temporary deployment of armed police arises as an urgent issue and a case would otherwise have to be adjourned; or if the Chief Magistrate is satisfied that there is a serious risk to public safety, then the Chief Magistrate will have a discretion to agree such deployment without having obtained the consent of the Senior Presiding Judge. In such a case:

(a) the Chief Magistrate should assess the facts and agree the proposed solution with a police officer of at least Superintendent level. That officer should agree the approach with the Firearms Division of the police.

(b) if the proposed solution involves the use of armed police officers, the Chief Magistrate must try to contact the Senior Presiding Judge by email and telephone. The Cluster Manager should be informed of the situation.

(c) if the Chief Magistrate cannot obtain a response from the Senior Presiding Judge, the Chief Magistrate may grant the application if satisfied:

(i) that the application is necessary;

(ii) that without such deployment there would be a significant risk to public safety; and

(iii) that the case would have to be adjourned at significant difficulty or inconvenience.

3M.25 The Chief Magistrate must keep the position under continual review, to ensure that it remains appropriate and necessary. The Chief Magistrate must make continued efforts to contact the Senior Presiding Judge to notify him of the full circumstances of the authorisation.

3N Use of live links and telephone hearings

CPD I General matters 3N: USE OF LIVE LINK AND TELEPHONE FACILITIES

3N.1 Where it is lawful and in the interests of justice to do so, courts should exercise their statutory and other powers to conduct hearings by live link or telephone. This is consistent with the Criminal Procedure Rules and with the recommendations of the President of the Queen's Bench Division's *Review of Efficiency in Criminal Proceedings* published in January 2015. Save where legislation circumscribes the court's jurisdiction, the breadth of that jurisdiction is acknowledged by CrimPR 3.5(1), (2)(d).

3N.2 It is the duty of the court to make use of technology actively to manage the case: CrimPR 3.2(1), (2)(h). That duty includes an obligation to give directions for the use of live links and telephone facilities in the circumstances listed in CrimPR 3.2(4) and (5) (pre-trial hearings, including pre-trial case management hearings). Where the court directs that evidence is to be given by live link, and especially where such a direction is given on the court's own initiative, it is essential that the decision is communicated promptly to the witness: CrimPR 18.4. Contrary to a practice adopted by some courts, none of those rules or other provisions require the renewal of a live link direction merely because a trial has had to be postponed or adjourned. Once made, such a direction applies until it is discharged by the court, having regard to the relevant statutory criteria.

3N.3 It is the duty of the parties to alert the court to any reason why live links or telephones should not be used where CrimPR 3.2 otherwise would oblige the court to do so; and, where a direction for the use of such facilities has been made, it is the duty of the parties as soon as practicable to alert the court to any reason why that direction should be varied CrimPR 3.3(2)(e) and 3.6.

3N.4 The word 'appropriate' in CrimPR 3.2(4) and (5) is not a term of art. It has the ordinary English meaning of 'fitting', or 'suitable'. Whether the facilities available to the court in any particular case can be considered appropriate is a matter for the court, but plainly to be appropriate such facilities must work, at the time at which they are required; all participants must be able to hear and, in the case of a live link, see each other clearly; and there must be no extraneous noise, movement or other distraction suffered by a participant, or transmitted by a participant to others. What degree of protection from accidental or deliberate interception should be considered appropriate will depend upon the purpose for which a live link or telephone is to be used. If it is to participate in a hearing which is open to the public anyway, then what is communicated by such means

is by definition public and the use of links such as Skype or Facetime, which are not generally considered secure from interception, may not be objectionable. If it is to participate in a hearing in private, and especially one at which sensitive information will be discussed – for example, on an application for a search warrant – then a more secure service is likely to be required.

3N.5 There may be circumstances in which the court should not require the use of live link or telephone facilities despite their being otherwise appropriate at a pre-trial hearing. In every case, in deciding whether any such circumstances apply the court will keep in mind that, for the purposes of what may be an essentially administrative hearing, it may be compatible with the overriding objective to proceed in the defendant's absence altogether, especially if he or she is represented, unless, exceptionally, a rule otherwise requires. The principle that the court always must consider proceeding in a defendant's absence is articulated in CrimPR 3.9(2)(a). Where at a pre-trial hearing bail may be under consideration, the provisions of CrimPR 14.2 will be relevant.

3N.6 Such circumstances will include any case in which the defendant's effective participation cannot be achieved by his or her attendance by such means, and CrimPR 3.2(4) and (5) except such cases from the scope of the obligation which that rule otherwise imposes on the court. That exception may apply where (this list is not exhaustive) the defendant has a disorder or disability, including a hearing, speech or sight impediment, or has communication needs to which the use of a live link or telephone is inimical (whether or not those needs are such as to require the appointment of an intermediary); or where the defendant requires interpretation and effective interpretation cannot be provided by live link or telephone, as the case may be. In deciding whether to require a defendant to attend a first hearing in a magistrates' court by live link from a police station, the court should take into account any views expressed by the defendant, the terms of any mental health or other medical assessment of the defendant carried out at the police station, and all other relevant information and representations available. No single factor is determinative, but the court must keep in mind the terms of section 57C(6A) of the Crime and Disorder Act 1998 (Use of live link at preliminary hearings where accused is at police station) which provides that 'A live link direction under this section may not be given unless the court is satisfied that it is not contrary to the interests of justice to give the direction.

3N.7 Finally, that exception sometimes may apply where the defendant's attendance in person at a pre-trial hearing will facilitate communication with his or her legal representatives. The court should not make such an exception merely to allow client and representatives to meet if that meeting can and should be held elsewhere. However, there will be cases in which defence representatives reasonably need to meet with a defendant, to take his or her instructions or to explain events to him or her, either shortly before or immediately after a pre-trial hearing and in circumstances in which that meeting cannot take place effectively by live link.

3N.8 Nothing prohibits the member or members of a court from conducting a pre-trial hearing by attending by live link or telephone from a location distant from all the other participants. Despite the conventional view that the venue for a court hearing is the court room in which that hearing has been arranged to take place,

the Criminal Procedure Rules define 'court' as 'a tribunal with jurisdiction over criminal cases. It includes a judge, recorder, District Judge (Magistrates' Court), lay justice and, when exercising their judicial powers, the Registrar of Criminal Appeals, a justices' clerk or assistant clerk.' Neither CrimPR 3.25 (Place of trial), which applies in the Crown Court, nor CrimPR 24.14 (Place of trial), which applies in magistrates' courts, each of which requires proceedings to take place in a courtroom provided by the Lord Chancellor, applies for the purposes of a pre-trial hearing. Thus for the purposes of such a hearing there is no legal obstacle to the judge, magistrate or magistrates conducting it from elsewhere, with other participants assembled in a courtroom from which the member or members of the court are physically absent. In principle, nothing prohibits the conduct of a pre-trial hearing by live link or telephone with each participant, including the member or members of the court, in a different location (an arrangement sometimes described as a 'virtual hearing'). This is dependent upon there being means by which that hearing can be witnessed by the public – for example, by public attendance at a courtroom or other venue from which the participants all can be seen and heard (if by live link), or heard (if by telephone). The principle of open justice to which paragraph 3N.17 refers is relevant.

3N.9 Sections 57A to 57F of the Crime and Disorder Act 1998 allow a defendant who is in custody to enter a plea by live link, and allow for such a defendant who attends by live link to be sentenced. In appropriate circumstances, the court may allow a defendant who is not in custody to enter a plea by live link; but the same considerations as apply to sentencing in such a case will apply: see paragraph 3N.13 beneath.

3N.10 The Crime and Disorder Act 1998 does not allow for the attendance by live link at a contested trial of a defendant who is in custody. The court may allow a defendant who wishes to do so to observe all or part of his or her trial by live link, whether she or he is in custody or not, but (a) such a defendant cannot lawfully give evidence by such means unless he or she satisfies the criteria prescribed by section 33A of the Youth Justice and Criminal Evidence Act 1999 and the court so orders under that section (see also CrimPR 18.14 – 18.17); (b) a defendant who is in custody and who observes the trial by live link is not present, as a matter of law, and the trial must be treated as taking place in his or her absence, she or he having waived the right to attend; and (c) a defendant who has refused to attend his or her trial when required to do so, or who has absconded, must not be permitted to observe the proceedings by live link.

3N.11 Paragraphs I 3D to 3G inclusive of these Practice Directions (Vulnerable people in the courts; Ground rules hearings to plan the questioning of a vulnerable witness or defendant; Intermediaries; Vulnerable defendants) contain directions relevant to the use of a live link as a special measure for a young or otherwise vulnerable witness, or to facilitate the giving of evidence by a defendant who is likewise young or otherwise vulnerable, within the scope of the Youth Justice and Criminal Evidence Act 1999. Defence representatives and the court must keep in mind that special measures under the 1999 Act and CrimPR Part 18, including the use of a live link, are available to defence as well as to prosecution witnesses who meet the statutory criteria. Defence representatives should always consider whether their witnesses would benefit from giving evidence by live link and should apply for a direction if appropriate, either at the case

management hearing or as soon as possible thereafter. A defence witness should be afforded the same facilities and treatment as a prosecution witness, including the same opportunity to make a pre-trial visit to the court building in order to familiarise himself or herself with it. Where a live link is sought as a special measure for a young or vulnerable witness or defendant, CrimPR 18.10 and 18.15 respectively require, among other things, that the applicant must identify someone to accompany that witness or defendant while they give evidence; must name the person, if possible; and must explain why that person would be an appropriate companion for that witness. The court must ensure that directions are given accordingly when ordering such a live link. Witness Service volunteers are available to support all witnesses, prosecution and defence, if required.

3N.12 Under sections 57A and 57D or 57E of the Crime and Disorder Act 1998 the court may pass sentence on a defendant in custody who attends by live link. The court may allow a defendant who is not in custody and who wishes to attend his or her sentencing by live link to do so, and may receive representations (but not evidence) from her or him by such means. Factors of which the court will wish to take account in exercising its discretion include, in particular, the penalty likely to be imposed; the importance of ensuring that the explanations of sentence required by CrimPR 24.11(9), in magistrates' courts, and in the Crown Court by CrimPR 25.16(7), can be given satisfactorily, for the defendant, for other participants and for the public, including reporters; and the preferences of the maker of any Victim Personal Statement which is to be read aloud or played pursuant to paragraph VII F.3(c) of these Practice Directions.

Youth defendants

3N.13 In the youth court or when a youth is appearing in the magistrates' court or the Crown Court, it will usually be appropriate for the youth to be produced in person at court. This is to ensure that the court can engage properly with the youth and that the necessary level of engagement can be facilitated with the Youth Offending Team worker, defence representative and/or appropriate adult responsible for the youth's care. The court should deal with any application for use of a live-link on a case-by-case basis, after consultation with the parties and the Youth Offending Team. Such hearings that may be appropriate, include, onward remand hearings at which there is no bail application or case management hearings, particularly if the youth is already serving a custodial sentence.

3N.14 It rarely will be appropriate for a youth to be sentenced over a live link. However, notwithstanding the court's duties of engagement with a youth, the overriding welfare principle and the statutory responsibility of the youth offending worker to explain the sentence to the youth, after consultation with the parties and the Youth Offending Team, there may be circumstances in which it may be appropriate to sentence a youth over the live-link:

a) If the youth is already serving a custodial sentence and the sentence to be imposed by the court is bound to be a further custodial sentence, whether concurrent or consecutive;

b) If the youth is already serving a custodial sentence and the court is minded to impose a non-custodial sentence which will have no material impact on the sentence being served;
c) The youth is being detained in a secure establishment at such a distance from the court that the travelling time from one to the other will be significant so as to materially affect the welfare of the youth;
d) The youth's condition-whether mental or otherwise- is so disturbed that his or her production would be a significant detriment to his or her welfare.

3N.15 Arrangements must be made in advance of any live link hearing to enable the youth offending worker to be at the secure establishment where the youth is in custody. In the event that such arrangements are not practicable, the youth offending worker must have sufficient access to the youth via the live link booth before and after the hearing.

Conduct of participants

3N.16 Where a live link is used, the immediate vicinity of the device by which a person attends becomes, temporarily, part of the courtroom for the purposes of that person's participation. That person, and any advocate or legal representative, custodian, court officer, intermediary or other companion, whether immediately visible to the court or not, becomes a participant for the purposes of CrimPR 1.2(2) and is subject to the court's jurisdiction to regulate behaviour in the courtroom. The substance and effect of this direction must be drawn to the attention of all such participants.

Open justice and records of proceedings

3N.17 The principle of open justice to which CrimPR 6.2(1) gives effect applies as strongly where electronic means of communication are used to conduct a hearing as it applies in other circumstances. Open justice is the principal means by which courts are kept under scrutiny by the public. It follows that where a participant attends a hearing in public by live link or telephone then that person's participation must be, as nearly as may be, equally audible and, if applicable, equally visible to the public as it would be were he or she physically present. Where electronic means of communication are used to conduct a hearing, records of the event must be maintained in the usual way: CrimPR 5.4. In the Crown Court, this includes the recording of the proceedings: CrimPR 5.5.

Annex 1 Guidance on establishing and using live link and telephone facilities for criminal court hearings

CPD I Annex:
GUIDANCE ON ESTABLISHING AND USING LIVE LINK AND TELEPHONE FACILITIES FOR CRIMINAL COURT HEARINGS

1. This guidance supplements paragraph I 3N of these Practice Directions on the use of live link and telephone facilities to conduct a hearing or receive evidence in a criminal court.

2. This guidance deals with many of the practical considerations that arise in connection with setting up and using live link and telephone facilities. However, it does not contain detailed instructions about how to use particular live link or telephone equipment at particular locations (how to turn the equipment on; how, and exactly when, to establish a connection between the courtroom and the other location; etc.) because details vary from place to place and cannot practicably all be contained in general guidance. Those details will be made available locally to those who need them. Nor does this guidance contain detailed instructions about the individual responsibilities of court staff, police officers and prison staff because those are matters for court managers, Chief Constables and HM Prison Governors.

Installation of live link and telephone facilities in the courtroom

3. Everyone in the courtroom must be able to hear and, in the case of a live link, see clearly those who attend by live link or telephone; and the equipment in the courtroom must allow those who attend by live link or telephone to hear, and in the case of a live link see, all the participants in the courtroom. If more than one person is to attend by live link or telephone simultaneously then the equipment must be capable of accommodating them all. (These requirements of course are subject to any special or other measures which a court in an individual case may direct to prevent a witness seeing, or being seen by, the defendant or another participant, or members of the public.)

4. Some of the considerations that apply to the installation and use of equipment in other locations will apply in a courtroom, too. They are set out in the following paragraphs. In the case of a live link, attention will need to be given to lighting and to making sure that those attending by live link can see and hear clearly what takes place in the courtroom without being distracted by the movement of court staff, legal representatives or members of the public, or by noise inside the courtroom. The sensitivity and positioning of the courtroom microphones may mean that even the movement of papers, or the operation of keyboards, while barely audible inside the courtroom itself, is clearly audible and distracting to a witness or defendant attending by live link or telephone.

Installation and use of live link and telephone facilities in a live link room

5. Paragraph 6 applies to the installation and use of equipment in a building or in a vehicle which is to be used regularly for giving evidence by live link. It applies to a room within the court building, but separated from the courtroom itself, from which a witness can give evidence by live link; it applies to such a room at a police station or elsewhere which has been set aside for regular use for such a purpose; and it applies to a van or other vehicle which has been adapted for use as a mobile live link room. However, that paragraph does not apply to the courtroom itself; it does not apply to a place from which a witness gives evidence, or a participant takes part in the proceedings, by live link or telephone, if that place is not regularly used for such a purpose (but see paragraph 7 beneath); and it does not apply in a prison or other place of detention (as to which, see paragraph 12 beneath). The objective is to ensure that anyone who participates by live link or telephone is conscious of the gravity of the occasion and of the authority of the court, and realises that

they are required to conduct themselves in the same respectful manner as if they were physically present in a courtroom.

6. A live link room should have the following features:

(a) the room should be an appropriate size, neither too small nor too large.

(b) the room should have suitable lighting, whether natural or electric. Any windows may need blinds or curtains fitted that can be adjusted in accordance with the weather conditions outside and to ensure privacy.

(c) there should be a sign or other means of making clear to those outside the room when the room is in use.

(d) arrangements should be made to ensure that nobody in the vicinity of the room is able to hear the evidence being given inside, unless the court otherwise directs (for example, to allow a witness' family to watch the witness' evidence on a supplementary screen in a nearby waiting room, as if they were seeing and hearing that evidence by live link in the courtroom).

(e) arrangements should be made to minimise the risk of disruption to the proceedings by noise outside the room. Such noise will distract the witness and may be audible and distracting to the court.

(f) the room should be provided with appropriate and comfortable seating for the witness and, where the witness is a civilian witness, seating for a Witness Service or other companion. A waiting area/room adjacent to the live link room may be required for any other persons attending with the witness. There must be adequate accommodation, support and, where appropriate, security within the premises for witnesses. If both prosecution and defence witnesses attend the same facility, they should wait in separate rooms. It may be inappropriate for defence witnesses to give evidence in police premises (for example in a trial for assaulting a police officer) and in that case parties and the court should identify an alternative venue such as a court building (not necessarily the location of the hearing), or arrange for evidence to be given from elsewhere by Skype, etc. Care must be taken to ensure that all witnesses, whether prosecution or defence, are afforded the same assistance, respect and security.

(g) the equipment installed (monitor, microphone and camera, or cameras) in the room must be good enough to ensure that both the picture and sound quality from the room to the court, and from the court to the room, is fit for purpose. The link must enable all in the courtroom to see and hear the witness clearly and it must enable the witness to see and hear clearly all participants in the courtroom.

(h) unless the court otherwise directs, the witness usually will sit to take the oath or affirm and to give evidence. The camera(s) must be positioned to ensure that the witness' face and demeanour can be seen whether he or she sits or stands.

(i) the wall behind the witness, and thus in view of the camera, should be a pale neutral colour (beige and light green/blue are most suitable) and there should be no pictures or notices displayed on that wall.

(j) the Royal coat of arms may be displayed to remind witnesses and others that when in use the room is part of the courtroom.

(k) a notice should be displayed that reminds users of the live link to conduct themselves in the same manner as if they were present in person in the courtroom, and to remind them that while using the live link they are subject to the court's jurisdiction to regulate behaviour in the courtroom.

(l) the room should be supplied with the same oath and affirmation cards and Holy books as are available in a courtroom. The guidance for the taking of oaths and the making of affirmations which applies in a courtroom applies equally in a live link room. Holy books must be treated with the utmost respect and stored with appropriate care.

(m) unless court or other staff are on hand to operate the live link or telephone equipment, clear instructions for users must be in the live link room explaining how, and when, to establish a connection to the courtroom.

Provision and use of live link and telephone facilities elsewhere

7. Where a witness gives evidence by live link, or a participant takes part in proceedings by live link or telephone, otherwise than from an established live link room, the objective remains the same as explained in paragraph 5 above. In accordance with that objective, the spirit of the requirements for a live link room should be followed as far as is reasonably practicable; but of course the court will not expect adherence to the letter of those requirements where, for example, a witness who is seriously ill but still able to testify is willing to do so from his or her sick bed, or a doctor or other expert witness is to testify by live link from her or his office. In any such case it is essential that the parties anticipate the arrangements and directions that may be required. Of particular and obvious importance is the need for arrangements that will exclude audible and visible interruptions during the proceedings, and the need for adequate clarity of communication between the remote location and the courtroom.

Conduct of hearings by live link or telephone

8. Before live link or telephone equipment is to be used to conduct a hearing, court staff must make sure that the equipment is in working order and that the essential criteria listed in paragraph I 3N.4 of the Practice Directions ('appropriate' facilities) are met.

9. If a witness who gives evidence by live link produces exhibits, the court must be asked to give appropriate directions during preparation for trial. In most cases the parties can be expected to agree the identity of the exhibit, whatever else is in dispute. In the absence of agreement, documentary exhibits, copies of which have been provided under CrimPR 24.13 (magistrates' court trial) or CrimPR 25.17 (Crown Court trial), and other exhibits which are clearly identifiable by reference to their features and which have been delivered by someone else to the court, may be capable of production by a witness who is using a live link.

10. Where a witness who gives evidence by live link is likely to be referred to exhibits or other material while he or she does so, whether or not as the producer of an exhibit, the court must be asked to give directions during preparation for trial to facilitate such a reference: for example, by requiring the preparation of a paginated and indexed trial bundle which will be readily accessible to the witness, on paper or in electronic form, as well as available to those who are in the courtroom. It is particularly important to make sure that documents and images which are to be displayed by electronic means in the courtroom will be accessible to the witness too. It is unlikely that the live link equipment will be capable of displaying sufficiently clearly to the witness images displayed only on a screen in the courtroom; and likely to be necessary to arrange for those images to be displayed also at the location from which the witness gives evidence, or made available to

him or her by some other means. It is likewise important that there should be readily accessible to the witness, on paper or in electronic form, a copy of his or her witness statement (to which she or he may be referred under CrimPR 24.4(5), in a magistrates' court, or under CrimPR 25.11(5), in the Crown Court) and transcript of his or her ABE interview, if applicable.

Conduct of those attending by live link or telephone: practical considerations

11. A person who gives evidence by live link, or who participates by live link or telephone, must behave exactly as if he or she were in the courtroom, addressing the court and the other participants in the proper manner and observing the appropriate social conventions, remembering that she or he will be heard, and if using a live link seen, as if physically present. A practical application of the rules and social conventions governing a participant's behaviour requires, among other things, the following:

(1) in the case of a professional participant, including a police officer, lawyer or expert witness:

(a) a participant should prepare themselves to communicate with the court with adequate time in hand, and especially where it will be necessary first to establish the live link or telephone connection with the court.

(b) on entering a live link room a participant should ensure that those outside are made aware that the room is in use, to avoid being interrupted while in communication with the court.

(c) a participant should ensure that they have the means to communicate with court staff by some means other than the proposed live link or telephone equipment, in case the equipment they plan to use should fail. They should have to hand an alternative contact number for the court and, if using a mobile phone for the purpose, they should ensure that it is fully charged.

(d) immediately before using the live link or telephone equipment to communicate with the court the person using that equipment and any other person in the live link room must as a general rule switch off any mobile telephone or other device which might interfere with that equipment or interrupt the proceedings. If the device is essential to giving evidence (for example, an electronic notebook), or if it is the only available means of communication with court staff should the other equipment fail, then every effort must be made to minimise the risk of interference, for example by switching a mobile telephone to silent and by placing electronic devices at a distance from the microphone.

(e) a person who gives evidence by live link, or who takes part in the proceedings for some other purpose by live link, must dress as they would if attending by physical presence in the courtroom.

each person in a live link room, whether he or she can be seen by the court or not, and each person present where a telephone conference or loudspeaker facility is in use, must identify themselves clearly to the court.

(g) a person who participates by telephone otherwise than from a room specially equipped for that purpose must take care to ensure that they cannot be

interrupted while in communication with the court and that no extraneous noise will be audible so as to distract that participant or the court.

(h) a person who participates by telephone in a call to which he or she, the court and others all contribute must take care to speak clearly and to avoid interrupting in such a way as to prevent any other participant hearing what is said. Particular care is required where a participant uses a hands-free or other loudspeaker phone.

(i) a witness who gives evidence by live link may take with him or her into the live link room a copy of her or his written witness statement and (if a police officer) his or her notebook. While giving evidence the witness must place the statement or notes face down, or otherwise out of sight, unless the court gives permission to refer to it. The witness must take the statement or notes away when leaving the live link room.

(j) where successive witnesses are due to give evidence about the same events by live link, and especially where they are due to do so from the same live link room; where the events in question are controversial; or where there is any suggestion that arrangements are_required to guard against the accidental or deliberate contamination of a witness' evidence by communication with one who has already given evidence, then the court must be asked to give directions accordingly. Subject to those directions, the usual arrangement should be that a witness who has been released should remain in sight of the court, by means of the live link, in the live link room while the next witness enters, and then should leave: so that the court will be able to see that no inappropriate communication between the two has occurred.

(2) in the case of any other participant:

(a) the preparation of any live link room and the use of the equipment will be the responsibility of court staff, or of the staff present at that live link room if it is outside the court building. Where the participant is a witness giving evidence pursuant to a special measures direction, detailed arrangements will have been made accordingly.

(b) mobile telephones and other devices that might interfere with the live link or telephone equipment must be switched off.

(c) a witness or other participant should take care to speak clearly and to avoid interrupting or making a sound which prevents another participant hearing what is said, especially where a hands-free or other loudspeaker phone is in use.

(d) the party who calls a witness, or the witness supporter, or court or other staff, as the case may be, must supply the witness with all he or she may need for the purpose of giving evidence, in accordance with the relevant rules and Practice Directions. This may, and usually will, include a copy of the witness' statement, in case it becomes necessary to ask him or her to refer to it, and copies of any exhibits or other material to which he or she may be asked to refer: see also paragraph 10 above.

Prison to court video links

12. The objective of the guidance in the preceding paragraphs applies. It is essential that the authority and gravity of the proceedings is respected, by defendants and by their custodians. Detailed instructions are contained in the information issued jointly by the National Offender Management Service and by HM Courts and Tribunals Service, with which prison and court staff must familiarise themselves. The principles set out in that guidance correspond with those of the Criminal Practice Directions, as elaborated in this guidance.

13. Where a defendant in custody attends court by live link it is likely that he or she will need to communicate with his or her representatives before and after the hearing, using the live link or by telephone. Arrangements will be required to allow that to take place.

14. Court staff are reminded that a live link to a prison establishment is a means of communication with the defendant. It does not provide an alternative means of formal communication with that establishment and it may not be used in substitution for service on that establishment of those notices and orders required to be served by the Criminal Procedure Rules.

3P Commissioning medical reports

CPD I General matters 3P: COMMISSIONING MEDICAL REPORTS

General observations

3P.1 CrimPR 24.3 and 25.10 concern procedures to be followed in magistrates' courts and in the Crown Court respectively where there is doubt about a defendant's mental health and, in the Crown Court, the defendant's capacity to participate in a trial. CrimPR 3.28 governs the procedure where, on the court's own initiative, a magistrates' court requires expert medical opinion about the potential suitability of a hospital order under section 37(3) of the Mental Health Act 1983 (hospital order without convicting the defendant), the Crown Court requires such opinion about the defendant's fitness to participate at trial, under section 4 of the Criminal Procedure (Insanity) Act 1964, or either a magistrates' court or the Crown Court requires such opinion to help the court determine a question of intent or insanity.

3P.2 Rule 3.28 governs the procedure to be followed where a report is commissioned at the instigation of the court. It is not a substitute for the prompt commissioning of a report or reports by a party or party's representatives where expert medical opinion is material to that party's case. In particular, those representing a defendant may wish to obtain a medical report or reports wholly independently of the court. Nothing in these directions, therefore, should be read as discouraging a party from commissioning a medical report before the case comes before the court, where that party believes such a report to be material to an issue in the case and where it is possible promptly to commission it. However, where a party has commissioned such a report then if that report has not been received by the time the court gives directions for preparation for trial, and if the court agrees that it seems likely that the report will be material to what is in issue, then when giving

directions for trial the court should include a timetable for the reception of that report and should give directions for progress to be reviewed at intervals, adopting the timetable set out in these directions with such adaptations as are needed.

3P.3 In assessing the likely materiality of an expert medical report to help the court assess a defendant's health and capacity at the time of the alleged offence or the time of trial, or both, the court will be assisted by the parties' representations; by the views expressed in any assessment that may already have been prepared; and by the views of practitioners in local criminal justice mental health services, whose assistance is available to the court under local liaison arrangements.

3P.4 Where the court requires the assistance of such a report then it is essential that there should be (i) absolute clarity about who is expected to do what, by when, and at whose expense; and (ii) judicial directions for progress with that report to be monitored and reviewed at prescribed intervals, following a timetable set by the court which culminates in the consideration of the report at a hearing. This is especially important where the report in question is a psychiatric assessment of the defendant for the preparation of which specific expertise may be required which is not readily available and because in some circumstances a second such assessment, by another medical practitioner, may be required.

Timetable for the commissioning, preparation and consideration of a report or reports

3P.5 CrimPR 3.28 requires the court to set a timetable appropriate to the case for the preparation and reception of a report. That timetable must not be in substitution for the usual timetable for preparation for trial but must instead be incorporated within the trial preparation timetable. The fact that a medical report is to be obtained, whether that is commissioned at a party's instigation or on the court's own initiative, is never a reason to postpone a preparation for trial or a plea and trial preparation hearing, or to decline to give the directions needed for preparation for trial. It follows that a trial date must be set and other directions given in the usual way.

3P.6 In setting the timetable for obtaining a report or reports the court will take account of such representations and other information that it receives, including information about the anticipated availability and workload of medical practitioners with the appropriate expertise. However, the timetable ought not be a protracted one. It is essential to keep in mind the importance of maintaining progress: in recognition of the defendant's rights and with respect for the interests of victims and witnesses, as required by CrimPR Part 1 (the overriding objective). In a magistrates' court account must be taken, too, of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, which limits the duration of each remand pending the preparation of a report to 3 weeks, where the defendant is to be in custody, and to 4 weeks if the defendant is to be on bail.

3P.7 Subject, therefore, to contrary judicial direction the timetable set by the court should require:

(a) the convening of a further pre-trial case management hearing to consider the report and its implications for the conduct of the proceedings no more than 6 – 8 weeks after the court makes its request in a magistrates' court, and no more than 10 – 12 weeks after the request in the Crown Court (at the end of Stage 2 of the directions for pre-trial preparation in the Crown Court);

(b) the prompt identification of an appropriate medical practitioner or practitioners, if not already identified by the court, and the despatch of a commission or commissions accordingly, within 2 business days of the court's decision to request a report;

(c) acknowledgement of a commission by its recipient, and acceptance or rejection of that commission, within 5 business days of its receipt;

(d) enquiries by court staff to confirm that the commission has been received, and to ascertain the action being taken in response, in the event that no acknowledgement is received within 10 business days of its despatch;

(e) delivery of the report within 5 weeks of the despatch of the commission;

(f) enquiries into progress by court staff in the event that no report is received within 5 weeks of the despatch of the commission.

3P.8 The further pre-trial case management hearing that is convened for the court to consider the report should not be adjourned before it takes place save in exceptional circumstances and then only by explicit judicial direction the reasons for which must be recorded. If by the time of that hearing the report is available, as usually should be the case, then at that hearing the court can be expected to determine the issue in respect of which the report was commissioned and give further directions accordingly. If by that time, exceptionally, the report is not available then the court should take the opportunity provided by that hearing to enquire into the reasons, give such directions as are appropriate, and if necessary adjourn the hearing to a fixed date for further consideration then. Where it is known in advance of that hearing that the report will not be available in time, the hearing may be conducted by live link or telephone: subject, in the defendant's case, to the same considerations as are identified at paragraph 3N.6 of these Practice Directions. However, it rarely will be appropriate to dispense altogether with that hearing, or to make enquiries and give further directions without any hearing at all, in view of the arrangements for monitoring and review that the court already will have directed and which, by definition therefore, thus far will have failed to secure the report's timely delivery.

3P.9 Where a requirement of the timetable set by the court is not met, or where on enquiry by court staff it appears that the timetable is unlikely to be met, and in any instance in which a medical practitioner who accepts a commission asks for more time, then court staff should not themselves adjust the timetable or accede to such a request but instead should seek directions from an appropriate judicial authority. Subject to local judicial direction, that will be, in the Crown Court, the judge assigned to the case or the resident judge and, in a magistrates' court, a District Judge (Magistrates' Courts) or justice of the peace assigned to the case, or the Justices' Clerk, an assistant clerk or other senior legal adviser. Even if the timetable is adjusted in consequence:

(a) the further pre-trial case management hearing convened to consider the report rarely should be adjourned before it takes place: see paragraph 3O.13 above;

(b) directions should be given for court staff henceforth to make regular enquiries into progress, at prescribed intervals of not more than 2 weeks, and to report the outcome to an appropriate judicial authority who will decide what further directions, if any, to give.

3P.10 Any adjournment of a hearing convened to consider the report should be to a specific date: the hearing should not be adjourned generally, or to a date to be set in due course. The adjournment of such a hearing should not be for more than a further 6 – 8 weeks save in the most exceptional circumstances; and no more than one adjournment of the hearing should be allowed without obtaining written or oral representations from the commissioned medical practitioner explaining the reasons for the delay.

Commissioning a report

3P.11 Guidance entitled 'Good practice guidance: commissioning, administering and producing psychiatric reports for sentencing' prepared for and published by the Ministry of Justice and HM Courts and Tribunals Service in September 2010 contains material that will assist court staff and those who are asked to prepare such reports:

http://www.ohrn.nhs.uk/resource/policy/GoodPracticeGuidePsychReports.pdf

The guidance includes standard forms of letters of instruction and other documents.

3P.12 CrimPR 3.28 requires the commissioner of a report to explain why the court seeks the report and to include relevant information about the circumstances. The HMCTS Guidance contains forms for judicial use in the instruction of court staff, and guidance to court staff on the preparation of letters of instruction, where a report is required for sentencing purposes. Those forms and that guidance can be adapted for use where the court requires a report on the defendant's fitness to particpate, in the Crown Court, or in a magistrates' court requires a report for the purposes of section 37(3) of the Mental Health Act 1983.

3P.13 The commission should invite a practitioner who is unable to accept it promptly to nominate a suitably qualified substitute, if possible, and to transfer the commission to that person, reporting the transfer when acknowledging the court officer's letter. It is entirely appropriate for the commission to draw the recipient's attention to CrimPR 1.2 (the duty of the participants in a criminal case) and to CrimPR 19.2(1)(b) (the obligation of an expert witness to comply with directions made by a court and at once to inform the court of any significant failure, by the expert or another, to take any step required by such a direction).

3P.14 Where the relevant legislation requires a second psychiatric assessment by a second medical practitioner, and where no commission already has been addressed to a second such practitioner, the commission may invite the person to

whom it is addressed to nominate a suitably qualified second person and to pass a copy of the commission to that person forthwith.

Funding arrangements

3P.15 Where a medical report has been, or is to be, commissioned by a party then that party is responsible for arranging payment of the fees incurred, even though the report is intended for the court's use. That must be made clear in that party's commission.

3P.16 Where a medical report is requested by the court and commissioned by a party or by court staff at the court's direction then the commission must include (i) confirmation that the fees will be paid by HMCTS, (ii) details of how, and to whom, to submit an invoice or claim for fees, and (iii) notice of the prescribed rates of fees and of any legislative or other criteria applicable to the calculation of the fees that may be paid.

Remand in custody

3P.17 Where the defendant who is to be examined will be remanded in custody then notice that directions have been given for a medical report or reports to be prepared must be included in the information given to the defendant's custodian, to ensure that the preparation of the report or reports can be facilitated. This is especially important where bail is withheld on the ground that it would be otherwise impracticable to complete the required report, and in particular where that is the only ground for withholding bail.

3Q Failure to comply with requirement to give name, date of birth and nationality

CPD I General matters 3Q: FAILURE TO COMPLY WITH REQUIREMENT TO GIVE NAME, DATE OF BIRTH AND NATIONALITY

3Q.1 Section 86A of the Courts Act 2003 requires a magistrates' court and the Crown Court to require a defendant to provide his or her name, date of birth and nationality in the circumstances and at the times set out in CrimPR 3.13(5) and 3.27(5). Section 86A(3) of the Act makes it an offence for the defendant without reasonable excuse to fail to comply with such a requirement, whether by providing false or incomplete information or by providing no information. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine, or both. It follows that a prosecution for failure to comply with a section 86A requirement may be brought by any of the procedures for which CrimPR Part 7 provides (Starting a prosecution in a magistrates' court) in the same way as any other allegation of a summary offence.

3Q.2 It does not follow, however, that every such allegation first must be reported to the police. Where the defendant's conduct evinces guilt, especially if the defendant refuses altogether to give the information required, such conduct undermines the administration of justice and the authority of the court. In principle, it should be dealt with at once. Section 86A(6) of the Act provides that, 'The criminal court before which a person is required to provide his or her name, date of birth and nationality may deal with any suspected offence under subsection (3) at the same time as dealing with the offence for which the person was already before the court'. In such a case, therefore, a magistrates' court may invite the prosecutor to institute proceedings orally, there and then, pursuant to section 1 of the Magistrates' Courts Act 1980 and CrimPR Part 7, and may there and then try the alleged offence in accordance with the rules in CrimPR Part 24 (Trial and sentence in a magistrates' court). A defendant should be allowed a reasonable opportunity to reflect and to take legal advice, from a duty solicitor if the defendant has no legal representative in the prosecution for the main offence. After that, unless the defendant then pleads guilty the prosecutor must call such evidence as may be convenient and sufficient, in the prosecutor's view, formally to prove the allegation; and the defendant may present evidence, for example of reasonable excuse, and may make representations in accordance with those rules.

3Q.3 Given that the Act expressly contemplates a prompt determination by the court before which there occurs an ostensible failure to comply with a section 86A requirement, rarely will it be necessary or appropriate to adjourn the trial of that allegation to a differently constituted court unless there emerges such a dispute of fact about what has occurred in the sight and hearing of the court as to disqualify the first bench from determining that dispute with perceived impartiality. In that rare event the trial of the allegation must be heard, the same day, by a different bench.[1] In any other event the constitution before whom the alleged offence under section 86A(3) has occurred usually should try the allegation, usually the same day.

3Q.4 If in the circumstances contemplated in the preceding paragraph a different bench convicts the defendant of the section 86A(3) offence, and if the defendant is convicted by the first bench of the offence for which the defendant was already before the court, then the court which passes sentence for that main offence should pass sentence also under section 86A(3). However, an offence under section 86A(3) is one that stands apart from the proceedings in the course of

[1] The risk is that a constitution which witnesses a defendant's refusal to give the information required will not be perceived to adjudicate impartially on a contention that, as a matter of fact, and against the prosecution evidence, the defendant was not asked for the information or did not refuse to give it. If that were the defence then the court would, of course, offer the defendant a renewed opportunity to comply with the requirement and only if that further opportunity were declined would the prosecution for the section 86A(3) offence be adjourned to a different bench. Such circumstances may be expected to arise only wholly exceptionally.

which it was committed the seriousness of which can be reflected by an appropriate and, generally, separate penalty.

3Q.5 Whether an alleged contravention of a section 86A requirement is dealt with the same day or later, after investigation by the police, no member of the court before whom the alleged contravention occurs should participate in the proceedings as the complainant or as a witness. Nor will it be appropriate to invite the defendant's representative, if any, to give evidence of what that representative may have witnessed in the court room. It is unexceptionable for court staff, including a legal adviser in a magistrates' court, to be asked to give evidence of what has taken place.

3Q.6 The offence contrary to section 86A(3) of the 2003 Act is one to which the time limit imposed by section 127 of the Magistrates' Courts Act 1980 applies, namely that a magistrates' court may not try an information unless that information was laid within 6 months from the time when the offence was committed. Where the court does not adopt the procedure described in paragraphs 3Q.2 and 3Q.3 above the alleged offence must be reported promptly to allow it to be investigated and, if appropriate, prosecuted in time.

3R Hearing to inform the court of sensitive material

CPD I General matters 3R: HEARING TO INFORM THE COURT OF SENSITIVE MATERIAL

3R.1 CrimPR 3.29 (Hearing to inform the court of sensitive material) governs the procedure that must be followed where a prosecutor has, or is aware of, sensitive material to which the prosecutor does not think the obligation to disclose applies but of the existence of which the prosecutor thinks it necessary to inform the court in order to mitigate the risks listed in that rule.

3R.2 Examples of such material were given by the Court of Appeal in *R v Ali* [2019] EWCA Crim 1527. Examples include information about the activities of a defendant or witness, or about a person to whom the evidence in the case refers, or information to the effect that the prosecution evidence omits matters irrelevant to the trial, derived from observations, for example, which is of sensitivity in some other respect. These are, however, only examples and other material may come within the scope of the rule.

3R.3 In the Crown Court a hearing to which rule 3.29 applies must be recorded: CrimPR 5.5 (Recording and transcription of proceedings in the Crown Court). It is very likely that the hearing will be conducted in private (see CrimPR 3.29(4))

and very likely that it will take place in a private room rather than in the courtroom. The recording therefore should be made using a suitable and suitably secure device, and it should be stored securely. In some circumstances that may require arrangements for the storage of the recording to be dealt with in accordance with CrimPR 3.29(4)(c)(ii) (storage by an appropriate person other than the court officer). Such storage arrangements are likely also to apply to any written material provided to the court under CrimPR 3.29(3)(c).

5A Forms

CrimPR Part 5 Forms and court records
CPD I General matters 5A: FORMS

5A.1 The forms at Annex D to the Consolidated Criminal Practice Direction of 8th July, 2002, [2002] 1 W.L.R. 2870; [2002] 2 Cr. App. R. 35, or forms to that effect, are to be used in the criminal courts, in accordance with CrimPR 5.1.

5A.2 The forms at Annex E to that Practice Direction, the case management forms, must be used in the criminal courts, in accordance with that rule.

5A.3 The table at the beginning of each section of each of those Annexes lists the forms and:

(a) shows the rule in connection with which each applies;

(b) describes each form.

5A.4 The forms may be amended or withdrawn from time to time, or new forms added, under the authority of the Lord Chief Justice.

5B Access to information held by the Court

CPD I General matters 5B: ACCESS TO INFORMATION HELD BY THE COURT

5B.1 Open justice, as Lord Justice Toulson re-iterated in the case of *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618, is a 'principle at the heart of our system of justice and vital to the rule of law'. There are exceptions but these 'have to be justified by some even more important principle.' However, the practical application of that undisputed principle, and the proper balancing of conflicting rights and principles, call for careful judgments to be made. The following is intended to provide some assistance to courts making decisions when asked to provide the public, including journalists, with access to or copies of information and documents held by the court, or when asked, exceptionally, to forbid the supply of transcripts that otherwise would have been supplied. It is not a prescriptive list, as the court will have to consider all the circumstances of each individual case.

5B.2 It remains the responsibility of the recipient of information or documents to ensure that they comply with any and all restrictions such as reporting restrictions (see Part 6 and the accompanying Practice Direction).

5B.3 For the purposes of this direction, the word document includes images in photographic, digital including DVD format, video, CCTV or any other form.

5B.4 Certain information can and should be provided to the public on request, subject to any restrictions, such as reporting restrictions, imposed in that particular case. CrimPR 5.5 governs the supply of transcript of a recording of proceedings in the Crown Court. CrimPR 5.8(4) and 5.8(6) read together specify the information that the court officer will supply to the public; an oral application is acceptable and no reason need be given for the request. There is no requirement for the court officer to consider the non-disclosure provisions of the Data Protection Act 1998 as the exemption under section 35 applies to all disclosure made under 'any enactment … or by the order of a court', which includes under the Criminal Procedure Rules.

5B.5 If the information sought is neither transcript nor listed at CrimPR 5.8(6), rule 5.8(7) will apply, and the provision of information is at the discretion of the court. The following guidance is intended to assist the court in exercising that discretion.

5B.6 A request for access to documents used in a criminal case should first be addressed to the party who presented them to the court or who, in the case of a written decision by the court, received that decision. Prosecuting authorities are subject to the Freedom of Information Act 2000 and the Data Protection Act 1998 and their decisions are susceptible to review.

5B.7 If the request is from a journalist or media organisation, note that there is a protocol between the NPCC, the CPS and the media entitled 'Publicity and the Criminal Justice System':

www.cps.gov.uk/publication/publicity-and-criminal-justice-system

There is additionally a protocol made under CrimPR 5.8(5)(b) between the media and HMCTS:

www.newsmediauk.org/write/MediaUploads/PDF%20Docs/Protocol_for_Sharing_Court_Documents.pdf

This Practice Direction does not affect the operation of those protocols. Material should generally be sought under the relevant protocol before an application is made to the court.

5B.8 An application to which CrimPR 5.8(7) applies must be made in accordance with rule 5.8; it must be in writing, unless the court permits otherwise, and 'must explain for what purpose the information is required.' A clear, detailed application, specifying the name and contact details of the applicant, whether or not he or she represents a media organisation, and setting out the reasons for the application and to what use the information will be put, will be of most assistance to the court. Applicants should state if they have requested the information under a protocol and include any reasons given for the refusal. Before considering such an application, the court will expect the applicant to have given notice of the request to the parties.

5B.9 The court will consider each application on its own merits. The burden of justifying a request for access rests on the applicant. Considerations to be taken into account will include:

i. whether or not the request is for the purpose of contemporaneous reporting; a request after the conclusion of the proceedings will require careful scrutiny by the court;
ii. the nature of the information or documents being sought;
iii. the purpose for which they are required;
iv. the stage of the proceedings at the time when the application is made;
v. the value of the documents in advancing the open justice principle, including enabling the media to discharge its role, which has been described as a 'public watchdog', by reporting the proceedings effectively;
vi. any risk of harm which access to them may cause to the legitimate interests of others; and
vii. any reasons given by the parties for refusing to provide the material requested and any other representations received from the parties.

Further, all of the principles below are subject to any specific restrictions in the case. Courts should be aware that the risk of providing a document may reduce after a particular point in the proceedings, and when the material requested may be made available.

Documents read aloud in their entirety

5B.10 If a document has been read aloud to the court in its entirety, it should usually be provided on request, unless to do so would be disruptive to the court proceedings or place an undue burden on the court, the advocates or others. It may be appropriate and convenient for material to be provided electronically, if this can be done securely.

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.

Documents treated as read aloud in their entirety

5B.12 A document treated by the court as if it had been read aloud in public, though in fact it has been neither read nor summarised aloud, should generally be made available on request. The burden on the court, the advocates or others in providing the material should be considered, but the presumption in favour of providing the material is greater when the material has only been treated as having been read aloud. Again, subject to security considerations, it may be convenient for the material to be provided electronically.

5B.13 Documents likely to fall into this category include:

i. Skeleton arguments
ii. Written submissions
iii. Written decisions by the court

Documents read aloud in part or summarised aloud

5B.14 Open justice requires only access to the part of the document that has been read aloud. If a member of the public requests a copy of such a document, the court should consider whether it is proportionate to order one of the parties to produce a suitably redacted version. If not, access to the document is unlikely to be granted; however open justice will generally have been satisfied by the document having been read out in court.

5B.15 If the request comes from an accredited member of the press (see *Access by reporters* below), there may be circumstances in which the court orders that a copy of the whole document be shown to the reporter, or provided, subject to the condition that those matters that had not been read out to the court may not be used or reported. A breach of such an order would be treated as a contempt of court.

5B.16 Documents in this category are likely to include:

i. Section 9 statements that are edited

Jury bundles and exhibits (including video footage shown to the jury)

5B.17 The court should consider:

i. whether access to the specific document is necessary to understand or effectively to report the case;
ii. the privacy of third parties, such as the victim (in some cases, the reporting restriction imposed by section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926 will apply (indecent or medical matter));
iii. whether the reporting of anything in the document may be prejudicial to a fair trial in this or another case, in which case whether it may be necessary to make an order under section 4(2) of the Contempt of Court Act 1981.

The court may order one of the parties to provide a copy of certain pages (or parts of the footage), but these should not be provided electronically.

Statements of witnesses who give oral evidence

5B.18 A witness statement does not become evidence unless it is agreed under section 9 of the Criminal Justice Act 1967 and presented to the court. Therefore the statements of witnesses who give oral evidence, including ABE interview and transcripts and experts' reports, should not usually be provided. Open justice is generally satisfied by public access to the court.

Confidential documents

5B.19 A document the content of which, though relied upon by the court, has not been communicated to the public or reporters, nor treated as if it had been, is likely to have been supplied in confidence and should be treated accordingly. This will apply even if the court has made reference to the document or quoted from the document. There is most unlikely to be a sufficient reason to displace the expectation of confidentiality ordinarily attaching to a document in this category, and it would be exceptional to permit the inspection or copying by a member of the public or of the media of such a document. The rights and legitimate interests

of others are likely to outweigh the interests of open justice with respect these documents.

5B.20 Documents in this category are likely to include:

i. Pre-sentence reports
ii. Medical reports
iii. Victim Personal Statements
iv. Reports and summaries for confiscation

Prohibitions against the provision of information

5B.21 Statutory provisions may impose specific prohibitions against the provision of information. Those most likely to be encountered are listed in the note to CrimPR 5.8 and include the Rehabilitation of Offenders Act 1974, section 18 of the Criminal Procedure and Investigations Act 1996 ("unused material" disclosed by the prosecution), sections 33, 34 and 35 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO Act 2012') (privileged information furnished to the Legal Aid Agency) and reporting restrictions generally.

5B.22 Reports of allocation or sending proceedings are restricted by section 52A of the Crime and Disorder Act 1998, so that only limited information, as specified in the statute, may be reported, whether it is referred to in the courtroom or not. The magistrates' court has power to order that the restriction shall not apply; if any defendant objects the court must apply the interests of justice test as specified in section 52A. The restriction ceases to apply either after all defendants indicate a plea of guilty, or after the conclusion of the trial of the last defendant to be tried. If the case does not result in a guilty plea, a finding of guilt or an acquittal, the restriction does not lift automatically and an application must be made to the court.

5B.23 Extradition proceedings have some features in common with committal proceedings, but no automatic reporting restrictions apply.

5B.24 Public Interest Immunity and the rights of a defendant, witnesses and victims under Article 6 and 8 of the European Convention on Human Rights may also restrict the power to release material to third parties.

Other documents

5B.25 The following table indicates the considerations likely to arise on an application to inspect or copy other documents.

Document	Considerations
Charge sheet Indictment	The alleged offence(s) will have been read aloud in court, and their terms must be supplied under CrimPR 5.8(4)

Material disclosed under CPIA 1996	To the extent that the content is deployed at trial, it becomes public at that hearing. Otherwise, it is a criminal offence for it to be disclosed: section 18 of the 1996 Act.
Written notices, applications, replies (including any application for representation)	To the extent that evidence is introduced, or measures taken, at trial, the content becomes public at that hearing. A statutory prohibition against disclosure applies to an application for representation: sections 33, 34 and 35 of the LASPO Act 2012.
Written decisions by the court, other than those read aloud in public or treated as if so read	Such decisions should usually be provided, subject to the criteria listed in CrimPR 5.8(4)(a) (and see also paragraph 5B.31 below).
Sentencing remarks	Sentencing remarks should usually be provided to the accredited Press, if the judge was reading from a prepared script which was handed out immediately afterwards; if not, then permission for a member of the accredited Press to obtain a transcript should usually be given (see also paragraphs 5B.26 and 29 below).
Official recordings	See CrimPR 5.5.
Transcript	See CrimPR 5.5 (and see also paragraphs 5B.32 to 36 below).

Access by reporters

5B.26 Under CrimPR Part 5 , the same procedure applies to applications for access to information by reporters as to other members of the public. However, if the application is made by legal representatives instructed by the media, or by an accredited member of the media, who is able to produce in support of the application a valid Press Card (http://www.ukpresscardauthority.co.uk/) then there is a greater presumption in favour of providing the requested material, in recognition of the press' role as 'public watchdog' in a democratic society (*Observer and Guardian v United Kingdom* (1992) 14 E.H.R.R. 153, Times November 27, 1991). The general principle in those circumstances is that the court should supply documents and information unless there is a good reason not to in order to protect the rights or legitimate interests of others and the request will not place an undue burden on the court (*R(Guardian News and Media Ltd)* at [87]). Subject to that, the paragraphs above relating to types of documents should be followed.

5B.27 Court staff should usually verify the authenticity of cards, checking the expiry date on the card and where necessary may consider telephoning the number on the reverse of the card to verify the card holder. Court staff may additionally request

sight of other identification if necessary to ensure that the card holder has been correctly identified. The supply of information under CrimPR 5.8(7) is at the discretion of the court, and court staff must ensure that they have received a clear direction from the court before providing any information or material under rule 5.8(7) to a member of the public, including to the accredited media or their legal representatives.

5B.28 Opening notes and skeleton arguments or written submissions, once they have been placed before the court, should usually be provided to the media. If there is no opening note, permission for the media to obtain a transcript of the prosecution opening should usually be given (see below). It may be convenient for copies to be provided electronically by counsel, provided that the documents are kept suitably secure. The media are expected to be aware of the limitations on the use to which such material can be put, for example that legal argument held in the absence of the jury must not be reported before the conclusion of the trial.

5B.29 The media should also be able to obtain transcripts of hearings held in open court directly from the transcription service provider, on payment of any required fee. The service providers commonly require the judge's authorisation before they will provide a transcript, as an additional verification to ensure that the correct material is released and reporting restrictions are noted. However, responsibility for compliance with any restriction always rests with the person receiving the information or material: see CPD I General matters 6B, beneath.

5B.30 It is not for the judge to exercise an editorial judgment about 'the adequacy of the material already available to the paper for its journalistic purpose' (*Guardian* at 82) but the responsibility for complying with the Contempt of Court Act 1981 and any and all restrictions on the use of the material rests with the recipient.

Written decisions

5B.31 Where the Criminal Procedure Rules allow for a determination without a hearing there may be occasions on which it furthers the overriding objective to deliver the court's decision to the parties in writing, without convening a public hearing at which that decision will be pronounced: on an application for costs made at the conclusion of a trial, for example. If the only reason for delivering a decision in that way is to promote efficiency and expedition and if no other consideration arises then usually a copy of the decision should be provided in response to any request once the decision is final. However, had the decision been announced in public then the criteria in CrimPR 5.8(4)(a) would have applied to the supply of information by the court officer; and ordinarily those same criteria should be applied by the court, therefore. Moreover, where considerations other than efficiency and expedition have influenced the court's decision to reach a determination without convening a hearing then those same considerations may be inimical to the supply of the written decision to any applicant other than a party. Reporting restrictions may be relevant, for example; as may the considerations listed in paragraph 5B.9 above. In such a case the court should consider supplying a redacted version of the decision in response to a request by anyone who is not a party; or it may be appropriate to give the decision in terms that can be supplied to the public, supplemented by additional reasons provided only to the parties.

Transcript

5B.32 CrimPR 5.5 does not require an application to the court for transcript, nor does the rule anticipate recourse to the court for a judicial decision about the supply of transcript in any but unusual circumstances. Ordinarily it is the rule itself that determines the circumstances in which the transcriber of a recording may or may not supply transcript to an applicant.

5B.33 Where reporting restrictions apply to information contained in the recording from which the transcript is prepared then unless the court otherwise directs it is for the transcriber to redact that transcript where redaction is necessary to permit its supply to that applicant. Having regard to the terms of the statutes that impose reporting restrictions, however, it is unlikely that redaction will be required frequently. Statutory restrictions prohibit publication 'to the public at large or any section of the public', or some comparable formulation. They do not ordinarily prohibit a publication constituted only of the supply of transcript to an individual applicant. However, any reporting restrictions will continue to apply to a recipient of transcript, and where they apply the recipient must be alerted to them by the endorsement on the transcript of a suitable warning notice, to this or the like effect:

"WARNING: reporting restrictions <u>may</u> apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice."

5B.34 Exceptionally, court staff may invite the court to direct that transcript must be redacted before it is supplied to an applicant, or that transcript must not be supplied to an applicant pending the supply of further information or assurances by that applicant, or at all, in exercise of the judicial discretion to which CrimPR 5.5(2) refers. Circumstances giving rise to concern may include, for example, the occurrence of events causing staff reasonably to suspect that an applicant intends or is likely to disregard a reporting restriction that applies, despite the warning notice endorsed on the transcript, or reasonably to suspect that an applicant has malicious intentions towards another person. Given that the proceedings will have taken place in public, despite any such suspicions cogent and compelling reasons will be required to deny a request for transcript of such proceedings and the onus rests always on the court to justify such a denial, not on the applicant to justify the request. Even where there are reasons to suspect a criminal intent, the appropriate course may be to direct that the police be informed of those reasons rather than to direct that the transcript be withheld. Nevertheless, it may be appropriate in such a case to direct that an application for the transcript should be made which complies with paragraph 5B.8 above (even though that paragraph does not apply); and then for the court to review that application with regard to

the considerations listed in paragraph 5B.9 above (but the usual burden of justifying a request under that paragraph does not apply).

5B.35 Some applicants for transcript may be taken to be aware of the significance of reporting restrictions, where they apply, and, by reason of such an applicant's statutory or other public or quasi-public functions, in any event unlikely to contravene any such restriction. Such applicants include public authorities within the meaning of section 6 of the Human Rights Act 1998 (a definition which extends to government departments and their agencies, local authorities, prosecuting authorities, and institutions such as the Parole Board and the Sentencing Council) and include public or private bodies exercising disciplinary functions in relation to practitioners of a regulated profession such as doctors, lawyers, accountants, etc. It would be only in the most exceptional circumstances that a court might conclude that any such body should not receive unredacted transcript of proceedings in public, irrespective of whether reporting restrictions do or do not apply.

5B.36 The rule imposes no time limit on a request for the supply of transcript. The assumption is that transcript of proceedings in public in the Crown Court will continue to be available for as long as relevant records are maintained by the Lord Chancellor under the legislation to which CrimPR 5.4 refers.

5C Issue of medical certificates

CPD I General matters: 5C ISSUE OF MEDICAL CERTIFCATES

5C.1 Doctors will be aware that medical notes are normally submitted by defendants in criminal proceedings as justification for not answering bail. Medical notes may also be submitted by witnesses who are due to give evidence and jurors.

5C.2 If a medical certificate is accepted by the court, this will result in cases (including contested hearings and trials) being adjourned rather than the court issuing a warrant for the defendant's arrest without bail. Medical certificates will also provide the defendant with sufficient evidence to defend a charge of failure to surrender to bail.

5C.3 However, a court is not absolutely bound by a medical certificate. The medical practitioner providing the certificate may be required by the court to give evidence. Alternatively the court may exercise its discretion to disregard a certificate which it finds unsatisfactory: *R V Ealing Magistrates' Court Ex P. Burgess [2001] 165 J.P. 82*

5C.4 Circumstances where the court may find a medical certificate unsatisfactory include:

(a) Where the certificate indicates that the defendant is unfit to attend work (rather than to attend court);
(b) Where the nature of the defendant's ailment (e.g. a broken arm) does not appear to be capable of preventing his attendance at court;
(c) Where the defendant is certified as suffering from stress/anxiety/depression and there is no indication of the defendant recovering within a realistic timescale.

5C.5 It therefore follows that the minimum standards a medical certificate should set out are:

(a) The date on which the medical practitioner examined the defendant;
(b) The exact nature of the defendants ailments
(c) If it is not self-evident, why the ailment prevents the defendant attending court;
(d) An indication as to when the defendant is likely to be able to attend court, or a date when the current certificate expires.

5C.6 Medical practitioners should be aware that when issuing a certificate to a defendant in criminal proceedings they make themselves liable to being summonsed to court to give evidence about the content of the certificate, and they may be asked to justify their statements.

6A Unofficial sound recording of proceedings

CrimPR Part 6 Reporting, etc. restrictions
CPD I General matters 6A: UNOFFICIAL SOUND RECORDING OF PROCEEDINGS

6A.1 Section 9 of the Contempt of Court Act 1981 contains provisions governing the unofficial use of equipment for recording sound in court.

Section 9(1) provides that it is a contempt of court

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the permission of the court;

(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;

(c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).

These provisions do not apply to the making or use of sound recordings for purposes of official transcripts of the proceedings, upon which the Act imposes no restriction whatever.

6A.2 The discretion given to the court to grant, withhold or withdraw leave to use equipment for recording sound or to impose conditions as to the use of the recording is unlimited, but the following factors may be relevant to its exercise:

(a) the existence of any reasonable need on the part of the applicant for leave, whether a litigant or a person connected with the press or broadcasting, for the recording to be made;

(b) the risk that the recording could be used for the purpose of briefing witnesses out of court;

(c) any possibility that the use of the recorder would disturb the proceedings or distract or worry any witnesses or other participants.

6A.3 Consideration should always be given whether conditions as to the use of a recording made pursuant to leave should be imposed. The identity and role of the applicant for leave and the nature of the subject matter of the proceedings may be relevant to this.

6A.4 The particular restriction imposed by section 9(1)(b) applies in every case, but may not be present in the mind of every applicant to whom leave is given. It may therefore be desirable on occasion for this provision to be drawn to the attention of those to whom leave is given.

6A.5 The transcript of a permitted recording is intended for the use of the person given leave to make it and is not intended to be used as, or to compete with, the official transcript mentioned in section 9(4).

6A.6 Where a contravention of section 9(1) is alleged, the procedure in section 2 of Part 48 of the Rules should be followed. Section 9(3) of the 1981 Act permits the court to 'order the instrument, or any recording made with it, or both, to be forfeited'. The procedure at CrimPR 6.10 should be followed.

6B Restrictions on reporting proceedings

CPD I General matters 6B: RESTRICTIONS ON REPORTING PROCEEDINGS

6B.1 Open justice is an essential principle in the criminal courts but the principle is subject to some statutory restrictions. These restrictions are either automatic or discretionary. Guidance is provided in the joint publication, Reporting Restrictions in the Criminal Courts issued by the Judicial College, the Newspaper Society, the Society of Editors and the Media Lawyers Association. The current version is the fourth edition and has been updated to be effective from May 2015.

6B.2 Where a restriction is automatic no order can or should be made in relation to matters falling within the relevant provisions. However, the court may, if it considers it appropriate to do so, give a reminder of the existence of the automatic restriction. The court may also discuss the scope of the restriction and any particular risks in the specific case in open court with representatives of the press present. Such judicial observations cannot constitute an order binding on the editor or the reporter although it is anticipated that a responsible editor would consider them carefully before deciding what should be published. It remains the responsibility of those reporting a case to ensure that restrictions are not breached.

6B.3 Before exercising its discretion to impose a restriction the court must follow precisely the statutory provisions under which the order is to be made, paying particular regard to what has to be established, by whom and to what standard.

6B.4 Without prejudice to the above paragraph, certain general principles apply to the exercise of the court's discretion:

(a) The court must have regard to CrimPR Parts 6 and 18.

(b) The court must keep in mind the fact that every order is a departure from the general principle that proceedings shall be open and freely reported.

(c) Before making any order the court must be satisfied that the purpose of the proposed order cannot be achieved by some lesser measure e.g. the grant of special measures, screens or the clearing of the public gallery (usually subject to a representative/s of the media remaining).

(d) The terms of the order must be proportionate so as to comply with Article 10 ECHR (freedom of expression).

(e) No order should be made without giving other parties to the proceedings and any other interested party, including any representative of the media, an opportunity to make representations.

(f) Any order should provide for any interested party who has not been present or represented at the time of the making of the order to have permission to apply within a limited period e.g. 24 hours.

(g) The wording of the order is the responsibility of the judge or Bench making the order: it must be in precise terms and, if practicable, agreed with the advocates.

(h) The order must be in writing and must state:

(i) the power under which it is made;

(ii) its precise scope and purpose; and

(iii) the time at which it shall cease to have effect, if appropriate.

(i) The order must specify, in every case, whether or not the making or terms of the order may be reported or whether this itself is prohibited. Such a report could cause the very mischief which the order was intended to prevent.

6B.5 A series of template orders have been prepared by the Judicial College and are available as an appendix to the Crown Court Bench Book Companion; these template orders should generally be used.

6B.6 A copy of the order should be provided to any person known to have an interest in reporting the proceedings and to any local or national media who regularly report proceedings in the court.

6B.7 Court staff should be prepared to answer any enquiry about a specific case; but it is and will remain the responsibility of anyone reporting a case to ensure that no

breach of any order occurs and the onus rests on such person to make enquiry in case of doubt.

6C The use of live text-based forms of communication (including Twitter) from court for the purposes of fair and adequate reporting

CPD I General matters 6C: USE OF LIVE TEXT-BASED FORMS OF COMMUNICATION (INCLUDING TWITTER) FROM COURT FOR THE PURPOSES OF FAIR AND ACCURATE REPORTING

6C.1 This part clarifies the use which may be made of live text-based communications, such as mobile email, social media (including Twitter) and internet-enabled laptops in and from courts throughout England and Wales. For the purpose of this part these means of communication are referred to, compendiously, as 'live text-based communications'. It is consistent with the legislative structure which:

(a) prohibits:

(i) the taking of photographs in court (section 41 of the Criminal Justice Act 1925);

(ii) the use of sound recording equipment in court unless the leave of the judge has first been obtained (section 9 of the Contempt of Court Act 1981); and

(b) requires compliance with the strict prohibition rules created by sections 1, 2 and 4 of the Contempt of Court Act 1981 in relation to the reporting of court proceedings.

General Principles

6C.2 The judge has an overriding responsibility to ensure that proceedings are conducted consistently, with the proper administration of justice, and to avoid any improper interference with its processes.

6C.3 A fundamental aspect of the proper administration of justice is the principle of open justice. Fair and accurate reporting of court proceedings forms part of that principle. The principle is, however, subject to well-known statutory and discretionary exceptions. Two such exceptions are the prohibitions, set out in paragraph 6C.1(a), on photography in court and on making sound recordings of court proceedings.

6C.4 The statutory prohibition on photography in court, by any means, is absolute. There is no judicial discretion to suspend or dispense with it. Any equipment which has photographic capability must not have that function activated.

6C.5 Sound recordings are also prohibited unless, in the exercise of its discretion, the court permits such equipment to be used. In criminal proceedings, some of the factors relevant to the exercise of that discretion are contained in paragraph 6A.2.

The same factors are likely to be relevant when consideration is being given to the exercise of this discretion in civil or family proceedings.

Use of Live Text-based Communications: General Considerations

6C.6 The normal, indeed almost invariable, rule has been that mobile phones must be turned off in court. There is however no statutory prohibition on the use of live text-based communications in open court.

6C.7 Where a member of the public, who is in court, wishes to use live text-based communications during court proceedings an application for permission to activate and use, in silent mode, a mobile phone, small laptop or similar piece of equipment, solely in order to make live text-based communications of the proceedings will need to be made. The application may be made formally or informally (for instance by communicating a request to the judge through court staff).

6C.8 It is presumed that a representative of the media or a legal commentator using live text-based communications from court does not pose a danger of interference to the proper administration of justice in the individual case. This is because the most obvious purpose of permitting the use of live text-based communications would be to enable the media to produce fair and accurate reports of the proceedings. As such, a representative of the media or a legal commentator who wishes to use live text-based communications from court may do so without making an application to the court.

6C.9 When considering, either generally on its own motion, or following a formal application or informal request by a member of the public, whether to permit live text-based communications, and if so by whom, the paramount question for the judge will be whether the application may interfere with the proper administration of justice.

6C.10 In considering the question of permission, the factors listed in paragraph 6A.2 are likely to be relevant.

6C.11 Without being exhaustive, the danger to the administration of justice is likely to be at its most acute in the context of criminal trials e.g., where witnesses who are out of court may be informed of what has already happened in court and so coached or briefed before they then give evidence, or where information posted on, for instance, Twitter about inadmissible evidence may influence members of the jury. However, the danger is not confined to criminal proceedings; in civil and sometimes family proceedings, simultaneous reporting from the courtroom may create pressure on witnesses, by distracting or worrying them.

6C.12 It may be necessary for the judge to limit live text-based communications to representatives of the media for journalistic purposes but to disallow its use by the wider public in court. That may arise if it is necessary, for example, to limit the number of mobile electronic devices in use at any given time because of the potential for electronic interference with the court's own sound recording

equipment, or because the widespread use of such devices in court may cause a distraction in the proceedings.

6C.13 Subject to these considerations, the use of an unobtrusive, hand-held, silent piece of modern equipment, for the purposes of simultaneous reporting of proceedings to the outside world as they unfold in court, is generally unlikely to interfere with the proper administration of justice.

6C.14 Permission to use live text-based communications from court may be withdrawn by the court at any time.

6D Taking notes in court

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.

6E Access to courts

CPD I General matters 6E: ACCESS TO COURTS

6E.1 The right of the public to access court rooms to observe proceedings is a fundamental part of open justice, and good practice will ensure that the public are able to view proceedings quietly, and without causing interruption, as far as is possible.

6E.2 However, as observed in *R (O'Connor) v Aldershot Magistrates' Court* [2017] 1 WLR 2833 "The right to attend a public court hearing and to enter the court building for that purpose is not unqualified." The court has an inherent power to restrict public access to the courtroom where it is necessary to do so in the interests of justice, for example to prevent disorder.

6E.3 During criminal proceedings in a Crown Court there are some specific parts of proceedings whereby it may be appropriate for a judge to restrict movement in the public gallery. As observed by Bean LJ in *R (on the application of Ewing) v Isleworth Crown Court* [2019] EWHC 288 9Admin) this is to ensure that during "these sensitive moments, generally of brief duration, it is necessary for the court to be still so that the process can take place without distraction and in a manner which preserves the dignity and solemnity of the proceedings". It is expected that during the following parts of the proceedings, access may be restricted to prevent comings and goings in the public gallery:

I. Arraignment;
II. Empanelling and swearing in of the jury;
III. Oath taking or affirmation;
IV. Return of verdict by a jury;
V. Passing of sentence by a Judge.

6E.4 In the *Ewing* judgment the Administrative Court made clear that it would be unlawful to issue a blanket policy that restricted access during other parts of proceedings. Unless the judge has specifically directed restrictions to access to the public gallery for good reason in a particular case, then at all other times, it is expected that the public can enter and leave the courtroom as they require, provided they do so quietly and without disrupting proceedings.

II Preliminary proceedings

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION II

PRELIMINARY PROCEEDINGS

7A First court attendance after charge and detention

CPD II Preliminary proceedings 7A: FIRST COURT ATTENDANCE AFTER CHARGE AND DETENTION

7A.1 A defendant who has been kept in police detention after being charged with an offence must be brought before a magistrates' court as soon as practicable and in any event no later than the first subsequent court sitting: section 46 of the Police and Criminal Evidence Act 1984. If no magistrates' court is due to sit on the day on which the defendant is charged, or on the next day which is not a Sunday, Christmas Day or Good Friday, then the Act requires the police custody officer to inform the court's designated officer of the defendant's detention, and requires the designated officer to arrange for a magistrates' court to sit.

7A.2 The 1984 Act thus imposes duties on the police and on HM Courts and Tribunals Service. In *R (on the application of H (A Child)) v Clerk to Teesside Justices* [2000] 10 WLUK 532 the High Court observed, "it is incumbent on justices and their clerks, however busy their courts may be, to ensure that they are able to receive persons in custody up to the end of normal court hours, at least, in order to comply with section 46 …, unless some exceptional circumstance intervenes to make that impossible in any particular case".

7A.3 To comply with those duties arrangements must be made to allow courts to receive such defendants during the course of a sitting day if the available time allows for the hearing of all cases to be concluded by 4.30pm, or later if, and only if, some disability or vulnerability of the defendant so requires. In practice, to allow sufficient time for consultation with a legal representative and for the subsequent hearing, the defendant must have been brought to the court building, or given access to a live link to the court, by no later than 3.30pm. To that end, Judicial Business Groups must ensure that effective practical arrangements have been made between police forces, HMCTS, the Crown Prosecution Service and prisoner escort contractors for the prompt transmission of information about defendants held for production before the court.

7A.4 On a Saturday or bank holiday normal court hours may differ from court to court based on likely caseload. Those hours must be determined by the HMCTS Head of Legal Operations in consultation with the judiciary and other agencies. In accordance with the court's observations in the *Teesside Justices' Clerk* case, all magistrates' courts should sit until at least 11.30 a.m. to receive defendants to

whom these directions apply unless arrangements have been made for such defendants to be dealt with by another court, either by attendance in person or by live link.

7A.5 For the purposes of section 46 of the 1984 Act the designated officer is the HMCTS Director of Operations, by whom the exercise of that statutory function is delegated to members of court staff. When informing such a delegate of a defendant's detention the police custody officer must at the same time supply the following, usually by electronic means:

(a) confirmation that:
  (i) the defendant has been charged,
  (ii) the case file is complete and available,
  (iii) any interpreter required is available,
  (iv) any appropriate adult or local authority officer responsible for the defendant's care has been notified and is available,
  (v) the defendant's legal representative has been notified and is available, and
  (vi) the CPS or other relevant prosecuting authority has been notified;
(b) the custody officer's proposal for the means by which the defendant should attend court, whether by live link or in person, and, if the latter, then whether by police transport or by prisoner escort contractor transport; and
(c) details of:
  (i) any physical or mental disability or other vulnerability (whether by reason of age or other circumstance) of the defendant of which police officers are aware, in particular where any such might be thought to make the use of live link inappropriate, and
  (ii) the expected time of arrival at court, if the defendant is to be brought to court in person.

No court should be expected to hear a case in respect of which such information is missing or incomplete, or in respect of which such arrangements have not been made.

7A.6 The designated officer's delegates must liaise with staff at the court buildings to which defendants in police detention may be brought. Each such delegate must be sufficiently experienced to be able to assess, swiftly and accurately, the availability of courts sitting in those buildings, and of sufficient seniority to take the decisions required by these directions. Each must be in a position to assess (i) the availability of court members, of legal advisers, of prosecutors and of the other staff needed to deal with an unexpected case, (ii) the potential effect of an unexpected case on other cases awaiting hearing that day, including the risk of a less urgent case being adjourned, perhaps not for the first time, in consequence of accommodating the unexpected hearing, (iii) the likely length of the unexpected hearing, and (iv) the significance of the age and any disability or other vulnerability of the unexpected defendant.

7A.7 The delegate to whom a police custody officer reports a defendant's detention must decide whether, and if so how, when and where, to accommodate that

defendant's case within the period to which paragraph 7A.3 or 7A.4 refers, having regard to the availability and content of the information to which paragraph 7A.5 refers and to the considerations listed in paragraph 7A.6. The decision must be informed by the views of those court members and legal advisers who may be affected, as listing is a judicial responsibility and function. It may be necessary for the delegate to take such steps as arranging for the unexpected case to be heard by live link; reorganising courts sitting in the court building to which the defendant is due to be brought; adjourning other cases; calling upon additional resources; or making arrangements with the delegate at another court building for the unexpected case to be heard by a court sitting there, by live link if appropriate. It may be necessary for the court that hears the unexpected case to impose a timetable for representations or to restrict the decisions that will be taken immediately. If it will not be possible to hear within the period to which paragraph 7A.3 or 7A.4 refers every case due to be heard that day at the court building to which the defendant is to be brought then every effort must be made to ensure that the cases of all defendants in custody, whether in that court building or attending by live link, still can be heard within that period. The delegate for that building must ensure that the police, the staff responsible for the court's own cells and the relevant prisoner escort contractor all are aware of the arrangements that have been made. If the prosecuting authority is not the CPS then that delegate must ensure that that other authority will arrange for a representative to attend, in person or by live link, to assist the court.

7A.8 If after conducting the assessment required by paragraph 7A.6 and taking the steps to which paragraph 7A.7 refers the designated officer's delegate finds it impossible to accommodate an unexpected case within the period to which paragraph 7A.3 or 7A.4 refers then arrangements must be made to hear the case on the next sitting day and the police custody officer must promptly be so informed.

8A Defendant's record

CrimPR Part 8 Initial details of the prosecution case
CPD II Preliminary proceedings 8A: DEFENDANT'S RECORD

Copies of record

8A.1 The defendant's record (previous convictions, cautions, reprimands, etc) may be taken into account when the court decides not only on sentence but also, for example, about bail, or when allocating a case for trial. It is therefore important that up to date and accurate information is available. Previous convictions must be provided as part of the initial details of the prosecution case under CrimPR Part 8.

8A.2 The record should usually be provided in the following format:

> Personal details and summary of convictions and cautions – Police National Computer ["PNC"] Court / Defence / Probation Summary Sheet;

Previous convictions – PNC Court / Defence / Probation printout, supplemented by Form MG16 if the police force holds convictions not shown on PNC;

Recorded cautions – PNC Court / Defence / Probation printout, supplemented by Form MG17 if the police force holds cautions not shown on PNC.

8A.3 The defence representative should take instructions on the defendant's record and if the defence wish to raise any objection to the record, this should be made known to the prosecutor immediately.

8A.4 It is the responsibility of the prosecutor to ensure that a copy of the defendant's record has been provided to the Probation Service.

8A.5 Where following conviction a custodial order is made, the court must ensure that a copy is attached to the order sent to the prison.

Additional information

8A.6 In the Crown Court, the police should also provide brief details of the circumstances of the last three similar convictions and / or of convictions likely to be of interest to the court, the latter being judged on a case-by-case basis.

8A.7 Where the current alleged offence could constitute a breach of an existing sentence such as a suspended sentence, community order or conditional discharge, and it is known that that sentence is still in force then details of the circumstances of the offence leading to the sentence should b included in the antecedents. The detail should be brief and include the date of the offence.

8A.8 On occasions the PNC printout provided may not be fully up to date. It is the responsibility of the prosecutor to ensure that all of the necessary information is available to the court and the Probation Service and provided to the defence. Oral updates at the hearing will sometimes be necessary, but it is preferable if this information is available in advance.

9A Allocation (mode of trial)

CrimPR Part 9 Allocation and sending for trial

CPD II Preliminary proceedings 9A: ALLOCATION (MODE OF TRIAL)

9A.1 Courts must follow the Sentencing Council's guideline on Allocation (mode of trial) when deciding whether or not to send defendants charged with "either way" offences for trial in the Crown Court under section 51(1) of the Crime and Disorder Act 1998.

10A Preparation and content of the Indictment

CrimPR Part 10 The indictment

CPD II Preliminary proceedings 10A: PREPARATION AND CONTENT OF THE INDICTMENT

Preferring the indictment

10A.1 Section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 allows Criminal Procedure Rules to "make provision … as to the manner in which and the time at which bills of indictment are to be preferred". CrimPR 10.2(5) lists the events which constitute preferment for the purposes of that Act. Where a defendant is contemplating an application to the Crown Court to dismiss an offence sent for trial, under the provisions to which CrimPR 9.16 applies, or where the prosecutor is contemplating discontinuance, under the provisions to which CrimPR Part 12 applies, the parties and the court must be astute to the effect of the occurrence of those events: the right to apply for dismissal is lost if the defendant is arraigned, and the right to discontinue is lost if the indictment is preferred.

Printing and signature of indictment

10A.2 Neither Section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 nor the Criminal Procedure Rules require an indictment to be printed or signed. Section 2(1) of the Act was amended by section 116 of the Coroners and Justice Act 2009 to remove the requirement for signature. For the potential benefit of the Criminal Appeal Office, CrimPR 10.2(7) requires only that any paper copy of the indictment which for any reason in fact is made for the court must be endorsed with a note to identify it as a copy of the indictment, and with the date on which the indictment came into being. For the same reason, CrimPR 3.22 requires only that any paper copy of an indictment which in fact has been made must be endorsed with a note of the order and of its date where the court makes an order for joint or separate trials affecting that indictment or makes an order for the amendment of that indictment in any respect.

Content of indictment; joint and separate trials

10A.3 The rule has been abolished which formerly required an indictment containing more than one count to include only offences founded on the same facts, or offences which constitute all or part of a series of the same or a similar character. However, if an indictment charges more than one offence, and if at least one of those offences does not meet those criteria, then CrimPR 3.21(4) cites that circumstance as an example of one in which the court may decide to exercise its power to order separate trials under section 5(3) of the Indictments Act 1915. It is for the court to decide which allegations, against whom, should be tried at the same time, having regard to the prosecutor's proposals, the parties' representations, the court's powers under the 1915 Act (see also CrimPR 3.21(4)) and the overriding objective. Where necessary the court should be invited to exercise those powers. It is generally undesirable for a large number of counts to be tried at the same time and the prosecutor may be required to identify a selection of counts on which the trial should proceed, leaving a decision to be taken later whether to try any of the remainder.

10A.4 Where an indictment contains substantive counts and one or more related conspiracy counts, the court will expect the prosecutor to justify their joint trial.

Failing justification, the prosecutor should be required to choose whether to proceed on the substantive counts or on the conspiracy counts. In any event, if there is a conviction on any counts that are tried, then those that have not been proceeded with can remain on the file marked "not to be proceeded with without the leave of the court or the Court of Appeal". In the event that a conviction is later quashed on appeal, the remaining counts can be tried.

10A.5 There is no rule of law or practice which prohibits two indictments being in existence at the same time for the same offence against the same person and on the same facts. However, the court will not allow the prosecutor to proceed on both indictments. They cannot be tried together and the court will require the prosecutor to elect the one on which the trial will proceed. Where different defendants have been separately sent for trial for offences which properly may be tried together then it is permissible to join in one indictment counts based on the separate sendings for trial even if an indictment based on one of them already exists.

Draft indictment generated electronically on sending for trial

10A.6 CrimPR 10.3 applies where court staff have introduced arrangements for the charges sent for trial to be presented in the Crown Court as the counts of a draft indictment without the need for those charges to be rewritten and served a second time on the defendant and on the court office. Where such arrangements are introduced, court users will be informed (and the fact will become apparent on the sending for trial).

10A.7 Now that there is no restriction on the counts that an indictment may contain (see paragraph 10A.3 above), and given the Crown Court's power, and in some cases obligation, to order separate trials, few circumstances will arise in which the court will wish to exercise the discretion conferred by rule 10.3(1) to direct that the rule will not apply, thus discarding such an electronically generated draft indictment. The most likely such circumstance to arise would be in a case in which prosecution evidence emerging soon after sending requires such a comprehensive amendment of the counts as to make it more convenient to all participants for the prosecutor to prepare and serve under CrimPR 10.4 a complete new draft indictment than to amend the electronically generated draft.

Draft indictment served by the prosecutor

10A.8 CrimPR 10.4 applies after sending for trial wherever CrimPR 10.3 does not. It requires the prosecutor to prepare a draft indictment and serve it on the Crown Court officer, who by CrimPR 10.2(7)(b) then must serve it on the defendant. In most instances service will be by electronic means, usually by making use of the Crown Court digital case system to which the prosecutor will upload the draft (which at once then becomes the indictment, under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 and CrimPR 10.2(5)(b)(ii)).

10A.9 The prosecutor's time limit for service of the draft indictment under CrimPR 10.4 is 28 days after serving under CrimPR 9.15 the evidence on which the prosecution

case relies. The Crown Court may extend that time limit, under CrimPR 10.2(8). However, under paragraph CrimPD I 3A.16 of these Practice Directions the court will expect that in every case a draft indictment will be served at least 7 days before the plea and trial preparation hearing, whether the time prescribed by the rule will have expired or not.

Amending the content of the indictment

10A.10 Where the prosecutor wishes to substitute or add counts to a draft indictment, or to invite the court to allow an indictment to be amended, so that the draft indictment, or indictment, will charge offences which differ from those with which the defendant first was charged, the defendant should be given as much notice as possible of what is proposed. It is likely that the defendant will need time to consider his or her position and advance notice will help to avoid delaying the proceedings.

Multiple offending: count charging more than one incident

10A.11 CrimPR 10.2(2) allows a single count to allege more than one incident of the commission of an offence in certain circumstances. Each incident must be of the same offence. The circumstances in which such a count may be appropriate include, but are not limited to, the following:

(a) the victim on each occasion was the same, or there was no identifiable individual victim as, for example, in a case of the unlawful importation of controlled drugs or of money laundering;

(b) the alleged incidents involved a marked degree of repetition in the method employed or in their location, or both;

(c) the alleged incidents took place over a clearly defined period, typically (but not necessarily) no more than about a year;

(d) in any event, the defence is such as to apply to every alleged incident. Where what is in issue differs in relation to different incidents, a single "multiple incidents" count will not be appropriate (though it may be appropriate to use two or more such counts according to the circumstances and to the issues raised by the defence).

10A.12 Even in circumstances such as those set out above, there may be occasions on which a prosecutor chooses not to use such a count, in order to bring the case within section 75(3)(a) of the Proceeds of Crime Act 2002 (criminal lifestyle established by conviction of three or more offences in the same proceedings): for example, because section 75(2)(c) of that Act does not apply (criminal lifestyle established by an offence committed over a period of at least six months). Where the prosecutor proposes such a course, it is unlikely that CrimPR Part 1 (the overriding objective) will require an indictment to contain a single "multiple

incidents" count in place of a larger number of counts, subject to the general principles set out at paragraph 10A.3.

10A.13 For some offences, particularly sexual offences, the penalty for the offence may have changed during the period over which the alleged incidents took place. In such a case, additional "multiple incidents" counts should be used so that each count only alleges incidents to which the same maximum penalty applies.

10A.14 In other cases, such as sexual or physical abuse, a complainant may be in a position only to give evidence of a series of similar incidents without being able to specify when or the precise circumstances in which they occurred. In these cases, a 'multiple incidents' count may be desirable. If on the other hand the complainant is able to identify particular incidents of the offence by reference to a date or other specific event, but alleges that in addition there were other incidents which the complainant is unable to specify, then it may be desirable to include separate counts for the identified incidents and a 'multiple incidents' count or counts alleging that incidents of the same offence occurred 'many' times. Using a 'multiple incidents' count may be an appropriate alternative to using 'specimen' counts in some cases where repeated sexual or physical abuse is alleged. The choice of count will depend on the particular circumstances of the case and should be determined bearing in mind the implications for sentencing set out in R v Canavan; R v Kidd; R v Shaw [1998] 1 W.L.R. 604, [1998] 1 Cr. App. R. 79, [1998] 1 Cr. App. R. (S.) 243. In R v A [2015] EWCA Crim 177, [2015] 2 Cr.App.R.(S.) 115(12) the Court of Appeal reviewed the circumstances in which a mixture of multiple incident and single incident counts might be appropriate where the prosecutor alleged sustained sexual abuse.

Multiple offending: trial by jury and then by judge alone

10A.15 Under sections 17 to 21 of the Domestic Violence, Crime and Victims Act 2004, the court may order that the trial of certain counts will be by jury in the usual way and, if the jury convicts, that other associated counts will be tried by judge alone. The use of this power is likely to be appropriate where justice cannot be done without charging a large number of separate offences and the allegations against the defendant appear to fall into distinct groups by reference to the identity of the victim, by reference to the dates of the offences, or by some other distinction in the nature of the offending conduct alleged.

10A.16 In such a case, it is essential to make clear from the outset the association asserted by the prosecutor between those counts to be tried by a jury and those counts which it is proposed should be tried by judge alone, if the jury convict on the former. A special form of indictment is prescribed for this purpose.

10A.17 An order for such a trial may be made only at a preparatory hearing. It follows that where the prosecutor intends to invite the court to order such a trial it will normally be appropriate to proceed as follows. A draft indictment in the form appropriate to such a trial should be served with an application under CrimPR 3.15 for a preparatory hearing. This will ensure that the defendant is aware at the

earliest possible opportunity of what the prosecutor proposes and of the proposed association of counts in the indictment.

10A.18 At the start of the preparatory hearing, the defendant should be arraigned on all counts in Part One of the indictment. Arraignment on Part Two need not take place until after there has been either a guilty plea to, or finding of guilt on, an associated count in Part One of the indictment.

10A.19 If the prosecutor's application is successful, the prosecutor should prepare an abstract of the indictment, containing the counts from Part One only, for use in the jury trial. Preparation of such an abstract does not involve "amendment" of the indictment. It is akin to where a defendant pleads guilty to certain counts in an indictment and is put in the charge of the jury on the remaining counts only.

10A.20 If the prosecutor's application for a two stage trial is unsuccessful, the prosecutor may apply to amend the indictment to remove from it any counts in Part Two which would make jury trial on the whole indictment impracticable and to revert to a standard form of indictment. It will be a matter for the court whether arraignment on outstanding counts takes place at the preparatory hearing, or at a future date."

10B Voluntary bills of indictment

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

III Custody and bail

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION III

CUSTODY AND BAIL

CrimPR Part 14 Bail and custody time limits

14A Bail before sending for trial

CPD III Custody and bail 14A: BAIL BEFORE SENDING FOR TRIAL

14A.1 Before the Crown Court can deal with an application under CrimPR 14.8 by a defendant after a magistrates' court has withheld bail, it must be satisfied that the magistrates' court has issued a certificate, under section 5(6A) of the Bail Act 1976, that it heard full argument on the application for bail before it refused the application. The certificate of full argument is produced by the magistrates' court's computer system, Libra, as part of the GENORD (General Form of Order). Two hard copies are produced, one for the defence and one for the prosecution. (Some magistrates' courts may also produce a manual certificate which will usually be available from the justices' legal adviser at the conclusion of the hearing; the GENORD may not be produced until the following day.) Under CrimPR 14.4(4), the magistrates' court officer will provide the defendant with a certificate that the court heard full argument. However, it is the responsibility of the defence, as the applicant in the Crown Court, to ensure that a copy of the certificate of full argument is provided to the Crown Court as part of the application (CrimPR 14.8(3)(e)). The applicant's solicitors should attach a copy of the certificate to the bail application form. If the certificate is not enclosed with the application form, it will be difficult to avoid some delay in listing.

Venue

14A.2 Applications should be made to the court to which the defendant will be, or would have been, sent for trial. In the event of an application in a purely summary case, it should be made to the Crown Court centre which normally receives Class 3 work. The hearing will be listed as a chambers matter, unless a judge has directed otherwise.

14B Bail: Failure to surrender and trials in absence

CPD III Custody and bail 14B: BAIL: FAILURE TO SURRENDER AND TRIALS IN ABSENCE

14B.1 The failure of defendants to comply with the terms of their bail by not surrendering, or not doing so at the appointed time, undermines the administration of justice and disrupts proceedings. The resulting delays impact on victims, witnesses and other court users and also waste costs. A defendant's failure to surrender affects not only the case with which he or she is concerned, but also the court's ability to administer justice more generally, by damaging the confidence of victims, witnesses and the public in the effectiveness of the court system and the judiciary. It is, therefore, most important that defendants who are granted bail appreciate the significance of the obligation to surrender to custody in accordance with the terms of their bail and that courts take appropriate action, if they fail to do so.

14B.2 A defendant who will be unable for medical reasons to attend court in accordance with his or her bail must obtain a certificate from his or her general practitioner or another appropriate medical practitioner such as the doctor with care of the defendant at a hospital. This should be obtained in advance of the hearing and conveyed to the court through the defendant's legal representative. In order to minimise the disruption to the court and to others, particularly witnesses if the case is listed for trial, the defendant should notify the court through his legal representative as soon as his inability to attend court becomes known.

14B.3 Guidance has been produced by the British Medical Association and the Crown Prosecution Service on the roles and responsibilities of medical practitioners when issuing medical certificates in criminal proceedings: link. Judges and magistrates should seek to ensure that this guidance is followed. However, it is a matter for each individual court to decide whether, in any particular case, the issued certificate should be accepted. Without a medical certificate or if an unsatisfactory certificate is provided, the court is likely to consider that the defendant has failed to surrender to bail.

14B.4 If a defendant fails to surrender to his or her bail there are at least four courses of action for the courts to consider taking:-

(a) imposing penalties for the failure to surrender;

(b) revoking bail or imposing more stringent conditions;

(c) conducting trials in the absence of the defendant;

and

(d) ordering that some or all of any sums of money lodged with the court as a security or pledged by a surety as a condition on the grant of bail be forfeit.

The relevant sentencing guideline is the Definitive Guideline Fail to Surrender to Bail. Under section 125(1) of the Coroners and Justice Act 2009, for offences committed on or after 6 April 2010, the court must follow the relevant guideline unless it would be contrary to the interests of justice to do so. The guideline can be obtained from the Sentencing Council's website:

https://www.sentencingcouncil.org.uk/

14C failure to surrender to bail: consequences and penalties

CPD III Custody and bail 14C: FAILURE TO SURRENDER TO BAIL: CONSEQUENCES AND PENALTIES

Initiating Proceedings – Bail granted by a police officer

14C.1 When a person has been granted bail by a police officer to attend court and subsequently fails to surrender to custody, the decision whether to initiate proceedings for a section 6(1) or section 6(2) offence will be for the police / prosecutor and proceedings are commenced in the usual way.

14C.2 The offence in this form is a summary offence although section 6(10) to (14) of the Bail Act 1976, inserted by section 15(3) of the Criminal Justice Act 2003, disapplies section 127 of the Magistrates' Courts Act 1980 and provides for alternative time limits for the commencement of proceedings. The offence should be dealt with on the first appearance after arrest, unless an adjournment is necessary, as it will be relevant in considering whether to grant bail again.

Initiating Proceedings – Bail granted by a court

14C.3 Where a person has been granted bail by a court and subsequently fails to surrender to custody, on arrest that person should normally be brought as soon as appropriate before the court at which the proceedings in respect of which bail was granted are to be heard. (There is no requirement to lay an information within the time limit for a Bail Act offence where bail was granted by the court).

14C.4 Given that bail was granted by a court, it is more appropriate that the court itself should initiate the proceedings by its own motion although the prosecutor may invite the court to take proceedings, if the prosecutor considers proceedings are appropriate.

Timing of disposal

14C.5 Courts should not, without good reason, adjourn the disposal of a section 6(1) or section 6(2) Bail Act 1976 offence (failure to surrender) until the conclusion of the proceedings in respect of which bail was granted but should deal with defendants as soon as is practicable. In deciding what is practicable, the court must take into account when the proceedings in respect of which bail was granted are expected to conclude, the seriousness of the offence for which the defendant is already being prosecuted, the type of penalty that might be imposed for the Bail Act offence and the original offence, as well as any other relevant circumstances.

14C.6 If the Bail Act offence is adjourned alongside the substantive proceedings, then it is still necessary to consider imposing a separate penalty at the trial. In addition, bail should usually be revoked in the meantime. Trial in the absence of the defendant is not a penalty for the Bail Act offence and a separate penalty may be imposed for the Bail Act offence.

Conduct of Proceedings

14C.7 Proceedings under section 6 of the Bail Act 1976 may be conducted either as a summary offence or as a criminal contempt of court. Where proceedings are commenced by the police or prosecutor, the prosecutor will conduct the proceedings and, if the matter is contested, call the evidence. Where the court initiates proceedings, with or without an invitation from the prosecutor, the court may expect the assistance of the prosecutor, such as in cross-examining the defendant, if required.

14C.8 The burden of proof is on the defendant to prove that he had reasonable cause for his failure to surrender to custody (section 6(3) of the Bail Act 1976).

Sentencing for a Bail Act offence

14C.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.

14C.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.

Arrest for breach of bail

14C.11 A defendant who has been released on bail but subsequently arrested for breach of a bail condition, or for failure to surrender to the court, actual or anticipated, must be brought before a magistrates' court (or a Crown Court judge, if the defendant is charged with murder) as soon as practicable and in any event within 24 hours of arrest. This does not apply to a defendant who is arrested within 24 hours of the next court hearing which that defendant is due to attend: such a defendant must be produced at that hearing instead. The period of 24 hours does not include Sunday, Christmas Day or Good Friday: see section 7 of the Bail Act 1976.

14C.12 Paragraphs II 7A.2 to 7A.8 of these Practice Directions apply to such a defendant as they do to one charged and brought before the court under section 46 of the Police and Criminal Evidence Act 1984, except for the requirements listed at paragraph II 7A.5(a)(i) and (ii) (requirements for confirmation of charge and preparation of case file), which must be read as if they required confirmation that (i) the allegation or allegations of breach of bail have been reduced to writing, and (ii) that allegation or those allegations, and any supporting documents, are complete and available. If the requirements of paragraph 7A.5, as thus read, are met, then the court before which the defendant is brought should take all the appropriate next steps in the case, including the taking of the defendant's plea;

allocation and sending for trial, if applicable; and, if possible, sentencing; and should do so even if the defendant had been released on bail by a different court.

Voluntary attendance at a court after failure to attend

14C.13 The court may consider taking any of the following courses of action where (i) a defendant has failed to attend a court at the appointed time, (ii) a warrant has been issued for the defendant's arrest for that failure, and (iii) the defendant subsequently attends voluntarily at some other time, or indicates a wish to do so, for example by making telephone enquiries of court staff:

(a) if the defendant is present, the court may arrange for the execution there and then of the warrant;
(b) if the defendant is present, the court may deal there and then with the case as if consequent on the execution of the warrant;
(c) the court may arrange a resumed hearing in the defendant's case at the next convenient opportunity, while warning the defendant that the warrant remains liable to be executed in the meantime; and
(d) the court may withdraw the warrant and arrange a resumed hearing in the defendant's case at the next convenient opportunity. The court should not withdraw an outstanding warrant unless the defendant provides evidence of an established current residential address, a telephone number and, if available, an email or other established electronic address.

14C.14 If an outstanding warrant is executed there and then, or if the court decides to deal at once with the defendant as if consequent on arrest, then paragraphs 14C.11 and 14C.12 apply and, consequently, paragraphs II 7A.2 to 7A.8 of these Practice Directions. However, if the defendant has not been arrested then the designated officer's delegate is under no such statutory duty as otherwise would apply to make efforts to accommodate the defendant's case and no step should be taken that disadvantages other cases awaiting hearing that day. In particular, it is only in exceptional circumstances that efforts should be made to accommodate a defendant who attends voluntarily and unexpectedly at a court building on any day other than a weekday on which a court is sitting at that building, or later than 12 noon on any such day.

14C.15 If an outstanding warrant for the defendant's arrest for failure to attend is either executed or withdrawn, court staff must ensure that this is recorded promptly in national police records.

14D Relationship between the Bail Act offence and further remands on bail or in custody

CPD III Custody and bail 14D: RELATIONSHIP BETWEEN THE BAIL ACT OFFENCE AND FURTHER REMANDS ON BAIL OR IN CUSTODY

14D.1 The court at which the defendant is produced should, where practicable and legally permissible, arrange to have all outstanding cases brought before it

(including those from different courts) for the purpose of progressing matters and dealing with the question of bail. This is likely to be practicable in the magistrates' court where cases can easily be transferred from one magistrates' court to another. Practice is likely to vary in the Crown Court. If the defendant appears before a different court, for example because he is charged with offences committed in another area, and it is not practicable for all matters to be concluded by that court then the defendant may be remanded on bail or in custody, if appropriate, to appear before the first court for the outstanding offences to be dealt with.

14D.2 When a defendant has been convicted of a Bail Act offence, the court should review the remand status of the defendant, including the conditions of that bail, in respect of all outstanding proceedings against the defendant.

14D.3 Failure by the defendant to surrender or a conviction for failing to surrender to bail in connection with the main proceedings will be significant factors weighing against the re-granting of bail.

14D.4 Whether or not an immediate custodial sentence has been imposed for the Bail Act offence, the court may, having reviewed the defendant's remand status, also remand the defendant in custody in the main proceedings.

14E Trials in absence

CPD III Custody and bail 14E: TRIALS IN ABSENCE

14E.1 Paragraphs VI 24C and 25B of these Practice Directions (Trial adjournment in magistrates' courts; Trial adjournment in the Crown Court) include guidance on the circumstances in which the court should proceed with or adjourn a trial from which the defendant absents himself or herself voluntarily.

14F Forfeiture of monies lodged as security or pledged by a surety/estreatment of recognizances

CPD III Custody and bail 14F: FORFEITURE OF MONIES LODGED AS SECURITY OR PLEDGED BY A SURETY/ESTREATMENT OF RECOGNIZANCES

14F.1 A surety undertakes to forfeit a sum of money if the defendant fails to surrender as required. Considerable care must be taken to explain that obligation and the consequences before a surety is taken. This system, in one form or another, has great antiquity. It is immensely valuable. A court concerned that a defendant will fail to surrender will not normally know that defendant personally, nor indeed much about him. When members of the community who do know the defendant say they trust him to surrender and are prepared to stake their own money on that trust, that can have a powerful influence on the decision of the court as to whether or not to grant bail. There are two important side-effects. The first is that the surety will keep an eye on the defendant, and report to the authorities if there is a concern that he will abscond. In those circumstances, the surety can withdraw. The second is that a defendant will be deterred from absconding by the knowledge that if he does so then his family or friends who provided the surety will lose their

money. In the experience of the courts, it is comparatively rare for a defendant to fail to surrender when meaningful sureties are in place.

14F.2 Any surety should have the opportunity to make representations to the defendant to surrender himself, in accordance with their obligations.

14F.3 The court should not wait or adjourn a decision on estreatment of sureties or securities until such time, if any, that the bailed defendant appears before the court. It is possible that any defendant who apparently absconds may have a defence of reasonable cause to the allegation of failure to surrender. If that happens, then any surety or security estreated would be returned. The reason for proceeding is that the defendant may never surrender, or may not surrender for many years. The court should still consider the sureties' obligations if that happens. Moreover, the longer the matter is delayed the more probable it is that the personal circumstances of the sureties will change.

14F.4 The court should follow the procedure at CrimPR 14.15. Before the court makes a decision, it should give the sureties the opportunity to make representations, either in person, through counsel or by statement.

14F.5 The court has discretion to forfeit the whole sum, part only of the sum, or to remit the sum. The starting point is that the surety is forfeited in full. It would be unfortunate if this valuable method of allowing a defendant to remain at liberty were undermined. Courts would have less confidence in the efficacy of sureties. It is also important to note that a defendant who absconds without in any way forewarning his sureties does not thereby release them from any or all of their responsibilities. Even if a surety does his best, he remains liable for the full amount, except at the discretion of the court. However, all factors should be taken into account and the following are noted for guidance only:

i) The presence or absence of culpability is a factor, but is not in itself a reason to reduce or set aside the obligations entered into by the surety.

ii) The means of a surety, and in particular changed means, are relevant.

iii) The court should forfeit no more than is necessary, in public policy, to maintain the integrity and confidence of the system of taking sureties.

14G Bail during trial

CPD III Custody and bail 14G: BAIL DURING TRIAL

14G.1 The following should be read subject to the Bail Act 1976.

14G.2 Once a trial has begun the further grant of bail, whether during the short adjournment or overnight, is in the discretion of the trial judge or trial Bench. It may be a proper exercise of this discretion to refuse bail during the short adjournment if the accused cannot otherwise be segregated from witnesses and jurors.

14G.3 An accused who was on bail while on remand should not be refused bail during the trial unless, in the opinion of the court, there are positive reasons to justify this refusal. Such reasons might include:

(a) that a point has been reached where there is a real danger that the accused will abscond, either because the case is going badly for him, or for any other reason;

(b) that there is a real danger that he may interfere with witnesses, jurors or co-defendants.

14G.4 Once the jury has returned a guilty verdict or a finding of guilt has been made, a further renewal of bail should be decided in the light of the gravity of the offence, any friction between co-defendants and the likely sentence to be passed in all the circumstances of the case.

14H Crown Court judge's certification of fitness to appeal and application to the Crown Court for bail pending appeal

CPD III Custody and bail 14H: CROWN COURT JUDGE'S CERTIFICATON OF FITNESS TO APPEAL AND APPLICATIONS TO THE CROWN COURT FOR BAIL PENDING APPEAL

14H.1 The trial or sentencing judge may grant a certificate of fitness for appeal (see, for example, sections 1(2)(b) and 11(1A) of the Criminal Appeal Act 1968); the judge in the Crown Court should only certify cases in exceptional circumstances. The Crown Court judge should use the Criminal Appeal Office Form C (Crown Court Judge's Certificate of fitness for appeal) which is available to court staff on the HMCTS intranet.

14H.2 The judge may well think it right to encourage the defendant's advocate to submit to the court, and serve on the prosecutor, before the hearing of the application, a draft of the grounds of appeal which he will ask the judge to certify on Form C.

14H.3 The first question for the judge is then whether there exists a particular and cogent ground of appeal. If there is no such ground, there can be no certificate; and if there is no certificate there can be no bail. A judge should not grant a certificate with regard to sentence merely in the light of mitigation to which he has, in his opinion, given due weight, nor in regard to conviction on a ground where he considers the chance of a successful appeal is not substantial. The judge should bear in mind that, where a certificate is refused, application may be made to the Court of Appeal for leave to appeal and for bail; it is expected that certificates will only be granted in exceptional circumstances.

14H.4 Defence advocates should note that the effect of a grant of a certificate is to remove the need for leave to appeal to be granted by the Court of Appeal. It does not in itself commence the appeal. The completed Form C will be sent by the Crown Court to the Criminal Appeal Office; it is not copied to the parties. The procedures in CrimPR Part 39 should be followed.

14H.5 Bail pending appeal to the Court of Appeal (Criminal Division) may be granted by the trial or sentencing judge if they have certified the case as fit for appeal (see

sections 81(1)(f) and 81(1B) of the Senior Courts Act 1981). Bail can only be granted in the Crown Court within 28 days of the conviction or sentence which is to be the subject of the appeal and may not be granted if an application for bail has already been made to the Court of Appeal. The procedure for bail to be granted by a judge of the Crown Court pending an appeal is governed by CrimPR Part 14. The Crown Court judge should use the Criminal Appeal Office Form BC (Crown Court Judge's Order granting bail) which is available to court staff on the HMCTS intranet.

14H.6 The length of the period which might elapse before the hearing of any appeal is not relevant to the grant of a certificate; but, if the judge does decide to grant a certificate, it may be one factor in the decision whether or not to grant bail. If bail is granted, the judge should consider imposing a condition of residence in line with the practice in the Court of Appeal (Criminal Division).

IV Disclosure

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION IV

DISCLOSURE

CrimPR Part 15 Disclosure

15A Disclosure of unused material

CPD IV Disclosure 15A: DISCLOSURE OF UNUSED MATERIAL

15A.1 Disclosure is a vital part of the preparation for trial, both in the magistrates' courts and in the Crown Court. All parties must be familiar with their obligations, in particular under the Criminal Procedure and Investigations Act 1996 as amended and the Code issued under that Act, and must comply with the relevant judicial protocol and guidelines from the Attorney-General. These documents have recently been revised and the new guidance will be issued shortly as *Judicial Protocol on the Disclosure of Unused Material in Criminal Cases* and the *Attorney-General's Guidelines on Disclosure*. The new documents should be read together as complementary, comprehensive guidance. They will be available electronically on the respective websites.

15A.2 In addition, certain procedures are prescribed under CrimPR Part 15 and these should be followed. The notes to Part 15 contain a useful summary of the requirements of the CPIA 1996 as amended.

V Evidence

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION V

EVIDENCE

CrimPR Part 16 Witness statements

16A Evidence by written statement

CPD V Evidence 16A: EVIDENCE BY WRITTEN STATEMENT

16A.1 Where the prosecution proposes to tender written statements in evidence under section 9 of the Criminal Justice Act 1967, it will frequently be necessary for certain statements to be edited. This will occur either because a witness has made more than one statement whose contents should conveniently be reduced into a single, comprehensive statement, or where a statement contains inadmissible, prejudicial or irrelevant material. Editing of statements must be done by a Crown Prosecutor (or by a legal representative, if any, of the prosecutor if the case is not being conducted by the Crown Prosecution Service) and not by a police officer.

Composite statements

16A.2 A composite statement giving the combined effect of two or more earlier statements must be prepared in compliance with the requirements of section 9 of the 1967 Act; and must then be signed by the witness.

Editing single statements

16A.3 There are two acceptable methods of editing single statements. They are:-

(a) By marking copies of the statement in a way which indicates the passages on which the prosecution will not rely. This merely indicates that the prosecution will not seek to adduce the evidence so marked. The original signed statement to be tendered to the court is not marked in any way.

The marking on the copy statement is done by lightly striking out the passages to be edited, so that what appears beneath can still be read, or by bracketing, or by a combination of both. It is not permissible to produce a photocopy with the deleted material obliterated, since this would be contrary to the requirement that the defence and the court should be served with copies of the signed original statement.

Whenever the striking out / bracketing method is used, it will assist if the following words appear at the foot of the frontispiece or index to any bundle of copy statements to be tendered:

'The prosecution does not propose to adduce evidence of those passages of the attached copy statements which have been struck out and / or bracketed (nor will it seek to do so at the trial unless a notice of further evidence is served)'.

(b) By obtaining a fresh statement, signed by the witness, which omits the offending material, applying the procedure for composite statements above.

16A.4 In most cases where a single statement is to be edited, the striking out/ bracketing method will be the more appropriate, but the taking of a fresh statement is preferable in the following circumstances:

(a) When a police (or other investigating) officer's statement contains details of interviews with more suspects than are eventually charged, a fresh statement should be prepared and signed, omitting all details of interview with those not charged except, insofar as it is relevant, for the bald fact that a certain named person was interviewed at a particular time, date and place.

(b) When a suspect is interviewed about more offences than are eventually made the subject of charges, a fresh statement should be prepared and signed, omitting all questions and answers about the uncharged offences unless either they might appropriately be taken into consideration, or evidence about those offences is admissible on the charges preferred. It may, however, be desirable to replace the omitted questions and answers with a phrase such as: *'After referring to some other matters, I then said, "… … …" ',* so as to make it clear that part of the interview has been omitted.

(c) A fresh statement should normally be prepared and signed if the only part of the original on which the prosecution is relying is only a small proportion of the whole, although it remains desirable to use the alternative method if there is reason to believe that the defence might itself wish to rely, in mitigation or for any other purpose, on at least some of those parts which the prosecution does not propose to adduce.

(d) When the passages contain material which the prosecution is entitled to withhold from disclosure to the defence.

16A.5 Prosecutors should also be aware that, where statements are to be tendered under section 9 of the 1967 Act in the course of summary proceedings, there will be a need to prepare fresh statements excluding inadmissible or prejudicial material, rather than using the striking out or bracketing method.

16A.6 Whenever a fresh statement is taken from a witness and served in evidence, the earlier, unedited statement(s) becomes unused material and should be scheduled and reviewed for disclosure to the defence in the usual way.

16B Video recorded evidence in chief

CPD V Evidence 16B: VIDEO RECORDED EVIDENCE IN CHIEF

16B.1 The procedure for making an application for leave to admit into evidence video recorded evidence in chief under section 27 of the Youth Justice and Criminal Evidence Act 1999 is given in CrimPR Part 18.

16B.2 Where a court, on application by a party to the proceedings or of its own motion, grants leave to admit a video recording in evidence under section 27(1) of the 1999 Act, it may direct that any part of the recording be excluded (section 27(2) and (3)). When such direction is given, the party who made the application to admit the video recording must edit the recording in accordance with the judge's directions and send a copy of the edited recording to the appropriate officer of the Crown Court and to every other party to the proceedings.

16B.3 Where a video recording is to be adduced during proceedings before the Crown Court, it should be produced and proved by the interviewer, or any other person who was present at the interview with the witness at which the recording was made. The applicant should ensure that such a person will be available for this purpose, unless the parties have agreed to accept a written statement in lieu of attendance by that person.

16B.4 Once a trial has begun, if, by reason of faulty or inadequate preparation or for some other cause, the procedures set out above have not been properly complied with and an application is made to edit the video recording, thereby necessitating an adjournment for the work to be carried out, the court may, at its discretion, make an appropriate award of costs.

16C Evidence of audio and video recorded interviews

CPD V Evidence 16C: EVIDENCE OF AUDIO AND VIDEO RECORDED INTERVIEWS

16C.1 The interrogation of suspects is primarily governed by Code C, one of the Codes of Practice under the Police and Criminal Evidence Act 1984 ('PACE'). Under that Code, interviews must normally be contemporaneously recorded. Under PACE Code E, interviews conducted at a police station concerning an indictable offence must normally be audio-recorded. In practice, most interviews are audio-recorded under Code E, or video-recorded under Code F, and it is best practice to do so. The questioning of terrorism suspects is governed separately by Code H. The Codes are available electronically on the Home Office website.

16C.2 Where a record of the interview is to be prepared, this should be in accordance with the current national guidelines, as envisaged by Note 5A of Code E.

16C.3 If the prosecution wishes to rely on the defendant's interview in evidence, the prosecution should seek to agree the record with the defence. Both parties should have received a copy of the audio or video recording, and can check the record against the recording. The record should be edited (see below) if inadmissible matters are included within it and, in particular if the interview is lengthy, the prosecution should seek to shorten it by editing or summary.

16C.4 If the record is agreed there is usually no need for the audio or video recording to be played in court. It is a matter for the discretion of the trial judge, but usual practice is for edited copies of the record to be provided to the court, and to the jury if there is one, and for the prosecution advocate to read the interview with the interviewing officer or the officer in the case, as part of the officer's evidence in chief, the officer reading the interviewer and the advocate reading the defendant and defence representative. In the magistrates' court, the Bench sometimes retire to read the interview themselves, and the document is treated as if it had been read aloud in court. This is permissible, but CrimPR 24.5 should be followed.

16C.5 Where the prosecution intends to adduce the interview in evidence, and agreement between the parties has not been reached about the record, sufficient notice must be given to allow consideration of any amendment to the record, or the preparation of any transcript of the interview, or any editing of a recording for the purpose of playing it in court. To that end, the following practice should be followed.

(a) Where the defence is unable to agree a record of interview or transcript (where one is already available) the prosecution should be notified at latest at the Plea and Case Management Hearing ('PCMH'), with a view to securing agreement to amend. The notice should specify the part to which objection is taken, or the part omitted which the defence consider should be included. A copy of the notice should be supplied to the court within the period specified above. The PCMH form inquires about the admissibility of the defendant's interview and shortening by editing or summarising for trial.

(b) If agreement is not reached and it is proposed that the audio or video recording or part of it be played in court, notice should be given to the prosecution by the defence as ordered at the PCMH, in order that the advocates for the parties may agree those parts of the audio or video recording that should not be adduced and that arrangements may be made, by editing or in some other way, to exclude that material. A copy of the notice should be supplied to the court.

(c) Notice of any agreement reached should be supplied to the court by the prosecution, as soon as is practicable.

16C.6 Alternatively, if, the prosecution advocate proposes to play the audio or video recording or part of it, the prosecution should at latest at the PCMH, notify the defence and the court. The defence should notify the prosecution and the court within 14 days of receiving the notice, if they object to the production of the audio or video recording on the basis that a part of it should be excluded. If the objections raised by the defence are accepted, the prosecution should prepare an edited recording, or make other arrangements to exclude the material part; and should notify the court of the arrangements made.

16C.7 If the defendant wishes to have the audio or video recording or any part of it played to the court, the defence should provide notice to the prosecution and the court at latest at the PCMH. The defence should also, at that time, notify the prosecution of any proposals to edit the recording and seek the prosecution's agreement to those amendments.

16C.8 Whenever editing or amendment of a record of interview or of an audio or video recording or of a transcript takes place, the following general principles should be followed:

(i) Where a defendant has made a statement which includes an admission of one or more other offences, the portion relating to other offences should be omitted unless it is or becomes admissible in evidence;

(ii) Where the statement of one defendant contains a portion which exculpates him or her and partly implicates a co-defendant in the trial, the defendant making the statement has the right to insist that everything relevant which is exculpatory goes before the jury. In such a case the judge must be consulted about how best to protect the position of the co-defendant.

16C.9 If it becomes necessary for either party to access the master copy of the audio or video recording, they should give notice to the other party and follow the procedure in PACE Code E at section 6.

16C.10 If there is a challenge to the integrity of the master recording, notice and particulars should be given to the court and to the prosecution by the defence as soon as is practicable. The court may then, at its discretion, order a case management hearing or give such other directions as may be appropriate.

16C.11 If an audio or video recording is to be adduced during proceedings before the Crown Court, it should be produced and proved in a witness statement by the interviewing officer or any other officer who was present at the interview at which the recording was made. The prosecution should ensure that the witness is available to attend court if required by the defence in the usual way.

16C.12 It is the responsibility of the prosecution to ensure that there is a person available to operate any audio or video equipment needed during the course of the proceedings. Subject to their other responsibilities, the court staff may be able to assist.

16C.13 If either party wishes to present audio or video evidence, that party must ensure, in advance of the hearing, that the evidence is in a format that is compatible with the court's equipment, and that the material to be used does in fact function properly in the relevant court room.

16C.14 In order to avoid the necessity for the court to listen to or watch lengthy or irrelevant material before the relevant part of a recording is reached, counsel shall indicate to the equipment operator those parts of a recording which it may be necessary to play. Such an indication should, so far as possible, be expressed in terms of the time track or other identifying process used by the interviewing police force and should be given in time for the operator to have located those parts by the appropriate point in the trial.

16C.15 Once a trial has begun, if, by reason of faulty preparation or for some other cause, the procedures above have not been properly complied with, and an application is made to amend the record of interview or transcript or to edit the recording, as the case may be, thereby making necessary an adjournment for the work to be carried out, the court may make at its discretion an appropriate award of costs.

16C.16 Where a case is listed for hearing on a date which falls within the time limits set out above, it is the responsibility of the parties to ensure that all the necessary steps are taken to comply with this Practice Direction within such shorter period as is available.

CrimPR Part 17 Witness summonses, warrants and orders

17A Wards of Court and children subject to current Family proceedings

CPD V Evidence 17A: WARDS OF COURT AND CHILDREN SUBJECT TO CURRENT FAMILY PROCEEDINGS

17A.1 Where police wish to interview a child who is subject to current family proceedings, leave of the Family Court is only required where such an interview may lead to a child disclosing information confidential to those proceedings and not otherwise available to the police under Working Together to Safeguard Children (March 2013), a guide to inter-agency working to safeguard and promote the welfare of children: www.workingtogetheronline.co.uk/chapters/contents.html

17A.2 Where exceptionally the child to be interviewed or called as a witness in criminal proceedings is a Ward of Court then the leave of the court which made the wardship order will be required.

17A.3 Any application for leave in respect of any such child must be made to the court in which the relevant family proceedings are continuing and must be made on notice to the parents, any actual carer (e.g. relative or foster parent) and, in care proceedings, to the local authority and the guardian. In private proceedings the Family Court Reporter (if appointed) should be notified.

17A.4 If the police need to interview the child without the knowledge of another party (usually a parent or carer), they may make the application for leave without giving notice to that party.

17A.5 Where leave is given the order should ordinarily give leave for any number of interviews that may be required. However, anything beyond that actually authorised will require a further application.

17A.6 Exceptionally the police may have to deal with complaints by or allegations against such a child immediately without obtaining the leave of the court as, for example

(a) a serious offence against a child (like rape) where immediate medical examination and collection of evidence is required; or

(b) where the child is to be interviewed as a suspect.

When any such action is necessary, the police should, in respect of each and every interview, notify the parents and other carer (if any) and the Family Court Reporter (if appointed). In care proceedings the local authority and guardian should be notified. The police must comply with all relevant Codes of Practice when conducting any such interview.

17A.7 The Family Court should be appraised of the position at the earliest reasonable opportunity by one of the notified parties and should thereafter be kept informed of any criminal proceedings.

17A.8 No evidence or document in the family proceedings or information about the proceedings should be disclosed into criminal proceedings without the leave of the Family Court.

CrimPR Part 18 Measures to assist a witness or defendant to give evidence

18A Measures to assist a witness or defendant to give evidence

CPD V Evidence 18A: MEASURES TO ASSIST A WITNESS OR DEFENDANT TO GIVE EVIDENCE

18A.1 For special measures applications, the procedures at CrimPR Part 18 should be followed. However, assisting a vulnerable witness to give evidence is not merely a matter of ordering the appropriate measure. Further directions about vulnerable people in the courts, ground rules hearings and intermediaries are given in paragraphs I 3D to 3G.

18A.2 Special measures need not be considered or ordered in isolation. The needs of the individual witness should be ascertained, and a combination of special measures may be appropriate. For example, if a witness who is to give evidence by live link wishes, screens can be used to shield the live link screen from the defendant and the public, as would occur if screens were being used for a witness giving evidence in the court room.

18B Witnesses giving evidence by live link

CPD V Evidence 18B: WITNESSES GIVING EVIDENCE BY LIVE LINK

18B.1 A special measures direction for the witness to give evidence by live link may also provide for a specified person to accompany the witness (CrimPR 18.10(f)). In determining who this should be, the court must have regard to the wishes of the witness. The presence of a supporter is designed to provide emotional support to the witness, helping reduce the witness's anxiety and stress and contributing to the ability to give best evidence. It is preferable for the direction to be made well before the trial begins and to ensure that the designated person is available on the day of the witness's testimony so as to provide certainty for the witness.

18B.2 An increased degree of flexibility is appropriate as to who can act as supporter. This can be anyone known to and trusted by the witness who is not a party to the proceedings and has no detailed knowledge of the evidence in the case. The supporter may be a member of the Witness Service but need not be an usher or court official. Someone else may be appropriate.

18B.3 The usher should continue to be available both to assist the witness and the witness supporter, and to ensure that the court's requirements are properly complied with in the live link room.

18B.4 In order to be able to express an informed view about special measures, the witness is entitled to practise speaking using the live link (and to see screens in place). Simply being shown the room and equipment is inadequate for this purpose.

18B.5 If, with the agreement of the court, the witness has chosen not to give evidence by live link but to do so in the court room, it may still be appropriate for a witness supporter to be selected in the same way, and for the supporter to sit alongside the witness while the witness is giving evidence.

18C Visually recorded interviews: memory refreshing and watching at a different time from the trial court

CPD V Evidence 18C: VISUALLY RECORDED INTERVIEWS: MEMORY REFRESHING AND WATCHING AT A DIFFERENT TIME FROM THE TRIAL COURT

18C.1 Witnesses are entitled to refresh their memory from their statement or visually recorded interview. The court should enquire at the PTPH or other case management hearing about arrangements for memory refreshing. The witness's first viewing of the visually recorded interview can be distressing or distracting. It should not be seen for the first time immediately before giving evidence. Depending upon the age and vulnerability of the witness several competing issues have to be considered and it may be that the assistance of the intermediary is needed to establish exactly how memory refreshing should be managed.

18C.2 If the interview is ruled inadmissible, the court must decide what constitutes an acceptable alternative method of memory refreshing.

18C.3 Decisions about how, when and where refreshing should take place should be court-led and made on a case-by-case basis in respect of each witness. General principles to be addressed include:

i. the venue for viewing. The delicate balance between combining the court familiarisation visit and watching the DVD, and having them on two separate occasions, needs to be considered in respect of each witness as combining the two may lead to 'information overload'. Refreshing need not necessarily take place within the court building but may be done, for example, at the police ABE suite.

ii. requiring that any viewing is monitored by a person (usually the officer in the case) who will report to the court about anything said by the witness.

iii. whether it is necessary for the witness to see the DVD more than once for the purpose of refreshing. The court will need to ask the advice of the intermediary, if any, with respect to this.

iv. arrangements, if the witness will not watch the DVD at the same time as the trial bench or judge and jury, for the witness to watch it before

attending to be cross examined, (depending upon their ability to retain information this may be the day before).

18C.4 There is no legal requirement that the witness should watch the interview at the same time as the trial bench or jury. Increasingly, this is arranged to occur at a different time, with the advantages that breaks can be taken as needed without disrupting the trial, and cross-examination starts while the witness is fresh. An intermediary may be present to facilitate communication but should not act as the independent person designated to take a note and report to the court if anything is said.

18C.5 Where the viewing takes place at a different time from that of the trial bench or jury, the witness is sworn (or promises) just before cross-examination and, unless the judge otherwise directs:

(a) it is good practice for the witness to be asked by the prosecutor, (or the judge/magistrate if they so direct), in appropriate language if, and when, he or she has watched the recording of the interview;
(b) if, in watching the recording of the interview or otherwise the witness has indicated that there is something he or she wishes to correct or to add then it is good practice for the prosecutor (or the judge/magistrate if they so direct) to deal with that before cross-examination provided that proper notice has been given to the defence.

18D Witness anonymity orders

CPD V Evidence 18D: WITNESS ANONYMITY ORDERS

18D.1 This direction supplements CrimPR 18.18 to 18.22, which govern the procedure to be followed on an application for a witness anonymity order. The court's power to make such an order is conferred by the Coroners and Justice Act 2009 (in this section, 'the Act'); section 87 of the Act provides specific relevant powers and obligations.

18D.2 As the Court of Appeal stated in *R v Mayers and Others* [2008] EWCA Crim 2989, [2009] 1 W.L.R. 1915, [2009] 1 Cr. App. R. 30 and emphasised again in *R v Donovan and Kafunda* [2012] EWCA Crim 2749, unreported, 'a witness anonymity order is to be regarded as a special measure of the last practicable resort': Lord Chief Justice, Lord Judge. In making such an application, the prosecution's obligations of disclosure 'go much further than the ordinary duties of disclosure' (*R v Mayers*); reference should be made to the Judicial Protocol on Disclosure, see paragraph IV 15A.1.

Case management

18D.3 Where such an application is proposed, with the parties' active assistance the court should set a realistic timetable, in accordance with the duties imposed by CrimPR 3.2 and 3.3. Where possible, the trial judge should determine the application, and any hearing should be attended by the parties' trial advocates.

Service of evidence and disclosure of prosecution material pending an application

18D.4 Where the prosecutor proposes an application for a witness anonymity order, it is not necessary for that application to have been determined before the proposed evidence is served. In most cases, an early indication of what that evidence will be if an order is made will be consistent with a party's duties under CrimPR 1.2 and 3.3. The prosecutor should serve with the other prosecution evidence a witness statement setting out the proposed evidence, redacted in such a way as to prevent disclosure of the witness' identity, as permitted by section 87(4) of the Act. Likewise the prosecutor should serve with other prosecution material disclosed under the Criminal Procedure and Investigations Act 1996 any such material appertaining to the witness, similarly redacted.

The application

18D.5 An application for a witness anonymity order should be made as early as possible and within the period for which CrimPR 18.3 provides. The application, and any hearing of it, must comply with the requirements of that rule and with those of rule 18.19. In accordance with CrimPR 1.2 and 3.3, the applicant must provide the court with all available information relevant to the considerations to which the Act requires a court to have regard.

Response to the application

18D.6 A party upon whom an application for a witness anonymity order is served must serve a response in accordance with CrimPR 18.22. That period may be extended or shortened in the court's discretion: CrimPR 18.5.

18D.7 To avoid the risk of injustice, a respondent, whether the Prosecution or a defendant, must actively assist the court. If not already done, a respondent defendant should serve a defence statement under section 5 or 6 of the Criminal Procedure and Investigations Act 1996, so that the court is fully informed of what is in issue. When a defendant makes an application for a witness anonymity order the prosecutor should consider the continuing duty to disclose material under section 7A of the Criminal Procedure and Investigations Act 1996; therefore a prosecutor's response should include confirmation that that duty has been considered. Great care should be taken to ensure that nothing disclosed contains anything that might reveal the witness' identity. A respondent prosecutor should provide the court with all available information relevant to the considerations to which the Act requires a court to have regard, whether or not that information falls to be disclosed under the 1996 Act.

Determination of the application

18D.8 All parties must have an opportunity to make oral representations to the court on an application for a witness anonymity order: section 87(6) of the Act. However, a hearing may not be needed if none is sought: CrimPR 18.18(1)(a). Where, for

example, the witness is an investigator who is recognisable by the defendant but known only by an assumed name, and there is no likelihood that the witness' credibility will be in issue, then the court may indicate a provisional decision and invite representations within a defined period, usually 14 days, including representations about whether there should be a hearing. In such a case, where the parties do not object the court may make an order without a hearing. Or where the court provisionally considers an application to be misconceived, an applicant may choose to withdraw it without requiring a hearing. Where the court directs a hearing of the application then it should allow adequate time for service of the representations in response.

18D.9 The hearing of an application for a witness anonymity order usually should be in private: CrimPR 18.18(1)(a) and before the trial judge wherever possible. The court has power to hear a party in the absence of a defendant and that defendant's representatives: section 87(7) of the Act and rule 18.18(1)(b). In the Crown Court, a recording of the proceedings will be made, in accordance with CrimPR 5.5. The Crown Court officer must treat such a recording in the same way as the recording of an application for a public interest ruling. It must be kept in secure conditions, and the arrangements made by the Crown Court officer for any transcription must impose restrictions that correspond with those under CrimPR 5.5(2).

18D.10 Where confidential supporting information is presented to the court before the last stage of the hearing, the court may prefer not to read that information until that last stage.

18D.11 The court may adjourn the hearing at any stage, and should do so if its duty under CrimPR 3.2 so requires.

18D.12 On a prosecutor's application, the court is likely to be assisted by the attendance of a senior investigator or other person of comparable authority who is familiar with the case.

18D.13 During the last stage of the hearing it is essential that the court test thoroughly the information supplied in confidence in order to satisfy itself that the conditions prescribed by the Act are met. At that stage, if the court concludes that this is the only way in which it can satisfy itself as to a relevant condition or consideration, exceptionally it may invite the applicant to present the proposed witness to be questioned by the court. Any such questioning should be carried out at such a time, and the witness brought to the court in such a way, as to prevent disclosure of his or her identity.

18D.14 The court may ask the Attorney General to appoint special counsel to assist. However, it must be kept in mind that, 'Such an appointment will always be exceptional, never automatic; a course of last and never first resort. It should not be ordered unless and until the trial judge is satisfied that no other course will adequately meet the overriding requirement of fairness to the defendant': *R v H* [2004] UKHL 3, [2004] 2 A.C. 134 (at paragraph 22), [2004] 2 Cr. App. R. 10. Whether to accede to such a request is a matter for the Attorney General, and adequate time should be allowed for the consideration of such a request.

18D.15 The Court of Appeal in *R v Mayers* 'emphasise[d] that all three conditions, A, B and C, must be met before the jurisdiction to make a witness anonymity order arises. Each is mandatory. Each is distinct.' The Court also noted that if there is more than one anonymous witness in a case any link, and the nature of any link, between the witnesses should be investigated: 'questions of possible improper collusion between them, or cross-contamination of one another, should be addressed.'

18D.16 Following a hearing the court should announce its decision on an application for a witness anonymity order in the parties' presence and in public: CrimPR 18.4(2). The court should give such reasons as it is possible to give without revealing the witness' identity. In the Crown Court, the court will be conscious that reasons given in public may be reported and reach the jury. Consequently, the court should ensure that nothing in its decision or its reasons could undermine any warning it may give jurors under section 90(2) of the Act. A record of the reasons must be kept. In the Crown Court, the announcement of those reasons will be recorded.

Order

18D.17 Where the court makes a witness anonymity order, it is essential that the measures to be taken are clearly specified in a written record of that order approved by the court and issued on its behalf, see also paragraph 18D.26 beneath. An order made in a magistrates' court must be recorded in the court register, in accordance with CrimPR 5.4.

18D.18 Should the judge grant the anonymity then the following should be considered by the judge with the assistance of the court staff, so that the practical arrangements (confidentially recorded) are in place to ensure that the witness's anonymity is not compromised:

I. Any pre-trial visit by the anonymous witness;
II. How the witness will enter and leave the court building;
III. Where the witness will wait until they give evidence;
IV. Provision for prosecution counsel to speak to the anonymous witness at court before they give evidence;
V. Provision for the anonymous witness to see their statement or view their ABEs;
VI. How the witness will enter and leave the court room;
VII. Provisions to disguise the identity of the anonymous witness whilst they give evidence (voice modulation and screens);
VIII. Provisions for the anonymous witness to have any breaks required;
IX. Provisions to protect the anonymity of the witness in the event of an emergency such as a security alert.

18D.19 Self-evidently, the written record of the order must not disclose the identity of the witness to whom it applies. However, it is essential that there be maintained some means of establishing a clear correlation between witness and order, and especially where in the same proceedings witness anonymity orders are made in respect of more than one witness, specifying different measures in respect of each.

Careful preservation of the application for the order, including the confidential part, ordinarily will suffice for this purpose.

18D.20 Should the application for anonymity be refused, consideration will be given as to whether the witness to whom the application related can be compelled to give evidence despite any risk to their safely and what special measures could support them to give their evidence.

Discharge or variation of the order

18D.21 Section 91 of the Act allows the court to discharge or vary a witness anonymity order: on application, if there has been a material change of circumstances since the order was made or since any previous variation of it; or on its own initiative. CrimPR 18.21 allows the parties to apply for the variation of a pre-trial direction where circumstances have changed.

18D.22 The court should keep under review the question of whether the conditions for making an order are met. In addition, consistently with the parties' duties under CrimPR 1.2 and 3.3, it is incumbent on each, and in particular on the applicant for the order, to keep the need for it under review.

18D.23 Where the court considers the discharge or variation of an order, the procedure that it adopts should be appropriate to the circumstances. As a general rule, that procedure should approximate to the procedure for determining an application for an order. The court may need to hear further representations by the applicant for the order in the absence of a respondent defendant and that defendant's representatives.

Retention of confidential material

18D.24 If retained by the court, confidential material must be stored in secure conditions by the court officer. Alternatively, subject to such directions as the court may give, such material may be committed to the safe keeping of the applicant or any other appropriate person in exercise of the powers conferred by CrimPR 18.6. If the material is released to any such person, the court should ensure that it will be available to the court at trial.

Arrangements at trial

18D.25 At trial the greatest possible care must be taken to ensure that nothing will compromise the witness' anonymity. Detailed arrangements may have been proposed by the applicant under CrimPR 18.19(1)(b) and directed by the court on determining the application for the order. Such arrangements must take account of the layout of the courtroom and of the means of access for the witness, for the defendant or defendants, and for members of the public. The risk of a chance encounter between the witness and someone who may recognise him or her, either then or subsequently, must be rigorously excluded. Subject to contrary direction by the trial judge, the court staff and those accompanying the witness must adopt necessary measures to ensure that the witness is neither seen nor

heard by anyone whose observation would, or might, render nugatory the court's order. Further HMCTS guidance for court staff can be found in Guidance for Criminal Courts for England and Wales for Anonymous/Protected Witnesses.

18E CPD V Evidence 18E: USE OF S. 28 YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999; PRE-RECORDING OF CROSS-EXAMINATION AND RE-EXAMINATION.

18E.1 When Section 28 of the Youth Justice and Criminal Evidence Act 1999 (s.28 YJCEA 1999) has been bought into force for a particular Crown Court a witness will be eligible for special measures under that section by virtue of section 16 of the Act (age or incapacity) or section 17 (fear or distress about testifying, or in proceedings for a sexual or other specified offence), to the extent provided by the relevant commencement order. A list of those orders, with links, appears at https://www.legislation.gov.uk/ukpga/1999/23/section/28.

18E.2 Applications for special measures directions are governed by Part 18 of the Criminal Procedure Rules and careful attention should be paid to the court's case management powers and the obligations on the parties. In addition to these paragraphs of these Practice Directions, paragraphs I 3D (Vulnerable people in the courts), I 3E (about ground rules hearings), I 3F (Intermediaries) V 18A (about special measures generally) and V 18C (about video recorded interviews) contain relevant guidance.

18E.3 Other guidance applicable primarily to the parties but of which courts should be aware includes:

(i) *the Protocol between the National Police Chiefs' Council, the Crown Prosecution Service and Her Majesty's Courts & Tribunals Service to expedite cases involving witnesses under 10 years*;

(ii) *Achieving Best Evidence in criminal proceedings*;

(iii) *the Attorney General's Guidelines on Disclosure*;

(iv) *the 2013 Protocol and Good Practice Model on Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings*;

(v) *the Advocates Gateway Toolkits*;

(vi) the Inns of Court College of Advocacy training document *Advocacy and the vulnerable: 20 principles of questioning*.

18E.4 Advocates should also refer to the annex to this practice direction which contains further detailed guidance on ground rules hearings where the witness is eligible for assistance under section 16 of the 1999 Act.

18E.5 Witnesses eligible for special measures under s.28 YJCEA 1999 should be identified promptly by the police. The police and Crown Prosecution Service should discuss, with the witness or with the witness' parent or carer, special measures available and the witness' needs, such that the most appropriate package of special measures can be identified. This may include use of a Registered Intermediary.

18E.6 For timetabling of the case, it is imperative that the investigators and prosecutor commence the disclosure process at the start of the investigation. The Attorney-General's Guidelines: Disclosure for Investigators, Prosecutors and Defence Practitioners must be followed, and if applicable, the *2013 Protocol and Good Practice Model on Disclosure of information in cases of alleged child abuse and linked criminal and care directions*.

18E.7 From the point of grant of the s.28 YJCEA 1999 special measures application, timescales provided by section 8.6 of A protocol between the Association of Chief Police Officers, the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service to expedite cases involving witnesses under 10 years will cease to apply and the case should be managed in accordance with the timescales established in this practice direction.

18E.8 Local Implementation Teams (LITs) should be established with all relevant agencies represented by someone of sufficient seniority. Their task will be to monitor the operation of the scheme and compliance with this practice direction and other relevant protocols. LITs should encourage all appropriate agencies to endorse and follow both the Protocol and the Good Practice Model. LITs should monitor compliance and issues should initially be raised at the LITs.

The first hearing in the magistrates' court

18E.9 The prosecutor must formally notify the court and the defence at the first hearing (or as soon as possible thereafter if eligibility only becomes apparent following the first hearing)

(a)that the case is eligible for special measures under s.28 YJCEA 1999; and

(b) whether or not the prosecutor intends to apply for such a direction in the Crown Court.

18E.10 This practice direction applies only where the defendant indicates a not guilty plea or does not indicate a plea, and the case is sent for trial in the Crown Court.

18E.11 In any case that is sent to the Crown Court for trial in which the prosecution has notified the court of its intention to make an application for special measures under s.28 of the YJCEA 1999 the timetable is that established by the Better Case Management initiative. The PTPH should be listed within 28 days of the date of sending from the magistrates' court.

Before the Plea and Trial Preparation Hearing in the Crown Court

18E.12 A transcript of the ABE interview and the application for special measures, including under s.28 YJCEA 1999, must be served on the Court and defence at least 5 business days prior to the PTPH. The report of any Registered Intermediary addressing this issue must be served with the application for special measures.

18E.13 Any defence representations about the application for special measures must be served before the PTPH.

18E.14 An application for a witness summons to obtain material held by a third party, should be served in advance of the PTPH and determined at that hearing, or as soon as reasonably practicable thereafter. The timetable should accommodate any consequent hearings or applications, but it is imperative parties are prompt to obtain third party disclosure material. The prosecution must make the court and the defence aware of any difficulty as soon as it arises.

At the Plea and Trial Preparation Hearing

18E.15 The Resident Judge may have appointed a judicial lead from the salaried judiciary at the court centre who will be responsible for monitoring and supervising the scheme. The Plea and Trial Preparation Hearing (PTPH) must be conducted by a salaried judge or other judge of suitable experience authorised for the purpose by the Resident Judge.

18E.16 The judge may hear submissions from the advocates and will rule on the application for special measures.

18E.17 The judge will need to consider:

- whether any of the special measures, or a combination of them, would be likely to improve the quality of the witness's evidence, and if so

- which of the special measures, or a combination of them would be likely to maximise, so far as practicable, the quality of evidence given by the witness.

18E.18 The judge should bear in mind all the circumstances of the case, including any views expressed by the witness and whether the measure or measures might tend to inhibit such evidence being effectively tested.

18E.19 The judge should pay careful regard to whether a section 28 special measures direction will in fact materially advance the date for the cross-examination and re-examination, so as to maximise, along with any other measures, the quality of the witness's evidence. This will involve detailed consideration of when the section 28 recording and the trial are likely to occur. This in turn will depend, amongst other things, on any waiting list to use the recording equipment, the likely length of the section 28 hearing and the availability of the judge, the advocates, the witness and a suitable courtroom.

18E.20 Furthermore, if there have already been delays, for instance because of a lack of resources to facilitate the timely prerecording of the ABE interview (the examination-in-chief), that additionally is a matter to which the judge should have regard when viewing the situation overall and deciding whether the section 28 special measure will improve and maximise the quality of the evidence.

18E.21 Against that background, the judge should determine which, if any, of the measures, or combination of them, would be likely to maximise so far as practicable the quality of the witness's evidence. It may be necessary for the judge to revisit the decision in this context in the light of changed circumstances.

18E.22 If the application is refused (see the assumptions to be applied by the courts in s.21 and s.22 of the YJCEA 1999), this practice direction ceases to apply.

18E.23 If the application is granted, the judge should make orders and give directions for preparation for the recorded cross-examination and re-examination hearing and advance preparation for the trial, including for any outstanding disclosure of unused material. The correct and timely application of the Criminal Procedure and Investigations Act 1996 ('CPIA 1996') will be vital and close attention should be paid to the *2013 Protocol and Good Practice Model on Disclosure* (November 2013) and the Attorney-General's Guidelines: Disclosure for Investigators, Prosecutors and Defence Practitioners, as referred to above.

18E.24 The orders made are likely to include:

i. Service of the prosecution evidence within 50 days of sending ;
ii. Directions for service of defence witness requirements;
iii. Service of initial disclosure; under the CPIA 1996, as soon as reasonably practical; in this context, this should be interpreted as being simultaneous with the service of the prosecution evidence, i.e. within 50 days of sending for both bail and custody cases. This will be within 3 weeks of the PTPH;
iv. Orders on disclosure material held by a third party;
v. Service of the defence statement; under the CPIA 1996, this must be served within 28 days of the prosecutor serving or purporting to serve initial disclosure;
vi. Any editing of the ABE interview;
vii. It will be for the judge to decide whether a ground rules hearing is necessary. If one is to take place, depending on the circumstances of the case, this should be listed either at a convenient date prior to the recorded cross-examination and re-examination hearing or it should take place immediately prior to the recording of the cross-examination and re-examination (see CPD General matters 3E: Ground rules hearings to plan questioning of a vulnerable witness or defendant);
viii. Service of the Ground Rules Hearing Form by the defence advocate;
ix. Making arrangements for the witness to refresh his or her memory by viewing the recorded examination-in-chief ("ABE interview"), see CPD Evidence 18C: Visually recorded interviews: memory refreshing and watching at a different time from the jury;
x. Making arrangements for the recorded cross-examination and re-examination hearing under s.28, including fixing a date, time and location;
xi. Other special measures;
xii. Directions for any further directions hearing whether at the conclusion of the recorded cross-examination and re-examination hearing or subsequently;
xiii. Provision by the prosecution of the paginated jury bundle, if possible, in advance of the s.28 hearing;
xiv. Fixing a date for trial.

18E.25 The timetable should ensure the prosecution evidence and initial disclosure are served swiftly. The ground rules hearing, if one is ordered, will usually be as soon as is feasible after the deadline for service of the defence statement. Time must be afforded for any further disclosure of unused material following service of the defence statement and for determination of any application under s.8 of the CPIA

1996. Subject to judicial discretion, applications for extensions of time for service of disclosure by either party should generally be refused.

18E.26 Where the defendant may be unfit to plead, a timetable for the s.28 hearing should usually still be set, taking into account the extra time needed to obtain any medical reports, save in cases where it is indicated that it is unlikely that there would be a trial if the defendant is found fit.

18E.27 As far as possible, without diminishing the defendant's right to a fair trial, the timing and duration of the recorded cross-examination should take into account the needs of the witness.

18E.28 The needs of other witnesses should not be neglected. Witness and intermediary availability dates should be available for the PTPH.

Prior to ground rules hearing and hearing under section 28

18E.29 It is imperative parties abide by orders made at the PTPH, including the completion and service of the Ground Rules Hearing Form by the defence advocate. Delays or failures must be reported to the judge as soon as they arise; this is the responsibility of each legal representative. If ordered, the lead lawyer for the prosecution and defence must provide a weekly update to the court detailing the progress and any difficulties or delays in complying with orders. The court may order a further case management hearing if necessary.

18E.30 Any applications under s.100 of the Criminal Justice Act 2003 ('CJA 2003') (non-defendant's bad character) or under s.41 of the YJCEA 1999 (evidence or cross-examination about complainants sexual behaviour) or any other application which may affect the cross-examination must be made promptly, and responses submitted in time for the judge to rule on the application at the ground rules hearing. Parts 21 and 22 of the Rules apply to applications under s.100 and s.41 respectively.

18E.31 The witness' court familiarisation visit should take place. When the witness is under 18 or it is otherwise appropriate, there should be an opportunity to practice on the live link/recording facilities. The witness must have the opportunity to view the ABE interview to refresh the witness' memory. It may or may not be appropriate for this to take place on the day of the court visit: CPD Evidence 18C must be followed.

18E.32 If the court decides that the case is suitable for the witness to give evidence from a remote site then a familiarisation visit should take place at that site. If a ground rules hearing is ordered, the judge and advocates should consider appropriate arrangements for them to talk to the witness before the cross examination hearing.

18E.33 Applications to vary or discharge a special measures direction must comply with CrimPR 18.11. The rule requires the application to be made as soon as reasonably practicable after becoming aware of the grounds for doing so.

Ground rules hearing

18E.34 Advocates should master the toolkits available through The Advocate's Gateway. The toolkits have potential relevance to applications where the witness is eligible for assistance under either s.16 or s.17 YJCEA 1999. These provide guidance on questioning a vulnerable witness, see CPD General matters 3D and the annex to this practice direction and the Inns of Court College of Advocacy ("ICCA") 20 Principles of Questioning.

18E.35 Any appointed Registered Intermediary must attend the ground rules hearing, see CrimPR 3.9(2).

18E.36 Depending on the circumstances of the case, the judge may order that the defence advocate who appeared at the ground rules hearing is to conduct the recorded cross-examination (see listing and allocation below).

18E.37 Topics for discussion and agreement at the ground rules hearing will depend on the individual needs of the witness, and an intermediary may provide advance indications. CPD General matters 3E must be followed. Topics that may require discussion, depending on the circumstances of the case, include:

i. the overall length of cross-examination;
ii. cross-examination by a single advocate in a multi-handed case;
iii. any restrictions on the advocate's usual duty to 'put the defence case'.

18E.38 It may be helpful to discuss at this stage how any limitations on questioning will be explained to the jury.

18E.39 If a ground rules hearing is ordered (whether or not on a date in advance of the recorded cross-examination and re-examination), this may provide a convenient opportunity for the judge to:

i. rule on any application under s.100 of the CJA 2003 or s.41 of the YJCEA 1999, or other applications that may affect the cross-examination;
ii. decide how the witness may view exhibits or documents;
iii. review progress in complying with orders made at the preliminary hearing and make any necessary orders.

Recording of cross-examination and re-examination: hearing under s.28

18E.40 At the hearing, the witness will be cross-examined and re-examined, if required, via the live link from the court room to the witness suite (unless provision has been made for the use of a remote link) and the examination will be recorded. It is the responsibility of the designated court clerk to ensure in advance that all of the equipment is working and to contact the provider's Service Desk if support is required. Any other special measures must be in place and any intermediary or supporter should sit in the live link room with the witness. The intermediary's role is transparent and therefore must be visible and audible to the judge and advocates at the cross-examination and in the subsequent replaying.

18E.41 The judge, advocates and parties, including the defendant will usually assemble in the court room for the hearing. In some cases the judge and advocates may be in the witness suite with the witness, for example when questioning a very young child or where the witness has a particular communication need. The court will decide this on a case-by-case basis. The defendant should be able to communicate

with his or her representatives and should be able to hear the witness via the live link and see the proceedings: s.28 (2). Whether the witness is screened or not will depend on the other special measures ordered, for example screens may have been ordered under s.23 YJCEA 1999.

18E.42 On the admission of the public or media to the hearing, please see below.

18E.43 At the conclusion of the hearing, the judge will issue further orders, such as for the editing of the recorded cross-examination and may set a timetable for progress.

18E.44 Under s.28(4) YJCEA 1999, the judge, on application of any parties or on the court's own motion, may direct that the recorded examination is not to be admitted into evidence, despite any previous direction. Such a direction must be given promptly, preferably immediately after the conclusion of the examination.

18E.45 Without exception, editing of the ABE interview/examination-in-chief or recorded cross-examination is precluded without an order of the court.

18E.46 The ability to record simultaneously from a court and a witness room and to play back the recording at trial will be provided in all Crown Courts as an additional facility within the existing Justice Video Service (JVS). Courts will book recording slots with the Service Desk who will launch the recording at the scheduled time when the court is ready. Recordings will be stored in a secure data centre with backup and resiliency, for authorised access.

After the recording

18E.47 Following the recording the judge should review compliance with orders and progress towards preparation for trial, make any further orders necessary and confirm the date of the trial. Any further orders made by the judge should be recorded and uploaded onto the relevant section of the DCS.

18E.48 If the defendant enters a guilty plea, the judge should proceed towards sentence, making any appropriate orders, such as for a Pre-Sentence Report and setting a date for sentencing. Any reduction for a guilty plea shall reflect the day of the recorded cross-examination as the first day of trial; the Sentencing Council guideline on guilty plea reductions should be applied.

Preparation for trial

18E.49 Parties must notify the court promptly if any difficulties arise or any orders are not complied with. The court may order a further case management hearing (FCMH).

18E.50 In accordance with orders, either after recorded cross-examination or at the FCMH, necessary editing of the ABE interview/examination-in-chief and/or the recorded cross-examination must be done only on the order of the court. Any editing must be done promptly.

18E.51 Recorded cross-examinations and re-examinations will be stored securely by the service provider so as to be accessible to the advocates and the court. It will not usually be necessary to obtain a transcript of the recorded cross-examination, but if it is difficult to comprehend, a transcript should be obtained and served. The ground rules hearing form outlines questions to the witness that might be completed electronically by the judge during cross-examination forming a contemporaneous note of the hearing, served on the parties as an agreed record.

18E.52 Editing, authorised by the judge, is to be submitted by the court to the Service Desk, who produce an edited copy. The master and all edited copy versions are retained in the secure data centre from where they can be accessed. Courts book playback timeslots with the Service Desk for the trial date. The court may authorise parties to view playback at JVS endpoints, by submitting a request form to the Service Desk. Access for those so authorised is via the Quickcode (recording ID) and a security PIN (password) on the courtroom touch panel or remote control.

18E.53 No further cross-examination or re-examination of the witness may take place unless the criteria in section 28(6) are satisfied and the judge makes a further special measures direction under section 28(5). Any such further examination must be recorded via live link as described above.

18E.54 Section 28(6) of the YJCEA 1999 provides as follows:

(6) The court may only give such a further direction if it appears to the court—

(a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then, or

(b) that for any other reason it is in the interests of justice to give the further direction.

18E.55 Any application under section 28(5) must be in writing and be served on the court and the prosecution at least 20 business days before the date of trial. The application must specify:

i. the topics on which further cross-examination is sought;
ii. the material or matter of which the defence has become aware since the original recording;
iii. why it was not possible for the defence to have obtained the material or ascertained the matter earlier; and
iv. the expected impact on the issues before the court at trial.

18E.56 The prosecution should respond in writing within 5 business days of the application. The judge may determine the application on the papers or order a hearing. Any further cross-examination ordered must be recorded via live link in advance of the trial and served on the court and the parties. These timescales may be abridged for good reason on application to the judge.

Trial

18E.57 In accordance with the judge's directions, the ABE interview/examination-in-chief and the recorded cross-examination and re-examination, edited as directed, should be played to the jury at the appropriate point within the trial.

18E.58 The jury should not usually receive transcripts of the recordings, and if they do these should be removed from the jury as soon as the recording has been played, see CPD Trial 26L.2.

18E.59 If the matter was not addressed at the ground rules hearing, the judge should discuss with the advocates how any limitations on questioning should be explained to the jury before summing-up. If not dealt with at the ground rules hearing, this should usually occur at the commencement of the trial. The judge will need to consider when to give a direction to the jury in this context, which is likely to be necessary before the recording is played.

After conclusion of trial

18E.60 Immediately after the trial, the ABE interview/examination-in-chief and the recorded cross-examination and re-examination should be stored securely on the cloud.

Listing and allocation

18E.61 **Advocates:** Depending on the circumstances of the case, the judge may order that the defence advocate who appeared at the ground rules hearing must conduct the recorded cross-examination. When such an order is made, the judge and list office will make whatever reasonable arrangements are feasible to achieve this, assisted by the Resident Judge when necessary. Although continuity of representation is to be encouraged, it is not mandatory for the advocate who conducted the section 28 cross-examination to represent the defendant at trial.

18E.62 When the timetable for the case is being set, advocates must have their up-to-date availability with them (in so far as is possible). When it has been ordered that the defence advocate who appeared at the ground rules hearing must conduct the recorded cross-examination, an advocate who is part-heard in another trial and is in difficulties in attending the s.28 hearing must inform the judges conducting the respective proceedings as soon as practicable. The judges shall resolve the conflict as regards the advocate's availability, taking into consideration the circumstances of the cases and the interests of justice (referring the issue, if necessary, to the Resident Judge(s)).

18E.63 Depending on the circumstances of the case, the Resident Judge or the nominated lead judge may order that the ground rules hearing and the s. 28 YJCEA 1999 hearing are to be listed before the same judge. Once the s.28 hearing has taken place, any judge, in accordance with CPD XIII Listing E, including recorders, can deal with the trial.

18E.64 **Listing**: S.28 hearings should be listed at a time determined by the list officer, or as directed by the judge or Resident Judge, bearing in mind the circumstances of the witness as well the availability of the judge, the advocates and a courtroom with the relevant equipment, including the ability to record the evidence. Ground rules hearings, if they are listed in advance of the day when the recorded cross-examination and re-examination is to occur, may be held at any time, including towards the end of the court day, to accommodate the advocates and the intermediary (if there is one) and to minimise disruption to other trials.

Public, including media access, and reporting restrictions

18E.65 Open justice is an essential principle of the common law. However, certain automatic statutory restrictions may apply, and the judge may consider it appropriate in the specific circumstances of a case to make an order applying discretionary restrictions. CPD I General Matters 6B must be followed and the templates published by the Judicial College (available on LMS) should be used. The parties to the proceedings, and interested parties such as the media, should have the opportunity to make representations before an order is made.

18E.66 The statutory powers most likely to be available to the judge are listed below. The judge should consider the specific statutory requirements necessary for the making of the particular order carefully, and the order made must be in writing.

a) Provisions to exclude the public from hearings:

i. Section 37 of the Children and Young Persons Act 1933, applicable to witnesses under 18;

ii. Section 25 of the YJCEA 1999, applicable to the evidence of a witness where the proceedings relate to a sexual offence or an offence under section 1 or 2 of the Modern Slavery Act 2015, or it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

b) Automatic reporting restrictions:

i. Section 1 of the Sexual Offences (Amendment) Act 1992, applicable to the complainant in any sex offence case.

c) Discretionary reporting restrictions:

i. Section 45 of the YJCEA 1999, applicable to under 18s concerned in criminal proceedings;

ii. Section 46 of the YJCEA 1999, applicable to an adult witness whose evidence would be diminished by fear or distress.

d) Postponement of fair and accurate reports under section 4(2) of the Contempt of Court Act 1981.

18E.67 Note that public access to information held by the court is now the subject of CrimPR 5.7 to 5.10 and CrimPD I General matters 5B that must be followed.

Annex for section 28 ground rules hearings at the Crown Court when dealing with witnesses under s.16 YJCEA 1999

Introduction

1. This annex is designed to assist all advocates in their preparation for cross-examination of vulnerable witnesses.

2. Adherence to the principles below will avoid interruption during the pre-recorded cross-examination and reduce any ordered editing.

3. Issues concerning the vulnerable witness and the nature of the cross-examination will be addressed by the judge at the Ground Rules Hearing (GRH).

4. In appropriate cases and in particular where the witness is of very young years or suffers from a disability or disorder it is expected that the advocate will have prepared his or her cross-examination in writing for consideration by the court.

5. It is thus incumbent on the Defence to ensure that full instructions have been taken prior to the GRH.

Required preparation prior to the GRH

6. All advocates should be familiar with the relevant toolkits, available through **The Advocates Gateway** which provide guidance on questioning a vulnerable witness. A synopsis of this guidance, which advocates should have read prior to any GRH, is included in this annex.

Attendance at, and procedure during, the GRH

7. In preparation for trial, courts must take every reasonable step to facilitate the participation of witnesses and defendants CPR 3.8(4) (d). The court should order that the defendant attends the GRH.

8. The defence advocate must complete and submit the Ground Rules Hearing form by the time and date ordered at the PTPH.

9. The hearing facilitates the judge's duty to control questioning if and when necessary.

10. The hearing enables the court to ensure its process is adapted to enable the witness to give his or her best evidence whilst ensuring the defendant's right to a fair trial is not diminished. Accordingly the ground rules and the nature of the questioning of the witness by the advocate (and limitations imposed if necessary in accordance with principles above) will be discussed.

11. Prior to the hearing it is necessary for both advocates and the judge to have viewed the ABE evidence.

12. The judge will state what ground rules will apply. The advocates must comply with them.

13. Any intermediary must attend the GRH. It is the responsibility of those instructing the intermediary to ensure this.

14. The judge may have ordered that the defendant's advocate attending the hearing is to be the same advocate who will be conducting the recorded cross-examination (and the subsequent trial, if any).

15. Any intermediary for the witness should only be warned for the GRH and the section 28 hearing they are assisting with. An Intermediary should not be instructed unless available to attend the GRH and the section 28 hearings ordered by the court (if listed on separate days).

16. Topics for discussion and agreement at the GRH will depend on the individual needs of the witness. CPD I General Matters 3E must be followed.

17. Topics of discussion at the hearing will include the length of cross-examination and any restrictions on the advocate's usual duty to "put the defence case". As was made plain by the Vice President of the Court of Appeal Criminal Division in *Regina v Lubemba and Pooley* 2014 EWCA Crim 2064, advocates cannot insist upon any supposed right "to put one's case" or previous inconsistent statements to a vulnerable witness. If there is a right to "put one's case" it must be modified for young or vulnerable witnesses. It is perfectly possible to ensure the jury are made aware of the defence case and of significant inconsistencies without intimidation or distressing a witness. It is expected that all advocates will be familiar with and have read this case.

18. At the GRH counsel need to agree with the judge how and when the matters referred to in paragraph 11 will be explained to the jury. This explanation will normally be done by the judge, but may exceptionally, and only with the permission of the judge, be explained by counsel. If there is no agreement the judge will rule on it.

19. A Section 28 Defence GRH form should be completed as far as possible prior to attendance at the GRH before the judge.

20. Rulings will be made on any application under section 100 of the CJA 2003 or section 41 of the YCEA 1999, and on any other application that may affect the conduct of the cross examination. Any ruling will be included in the trial practice note.

21. A review will take place of the progress made by the parties in complying with the orders made at the PTPH and the court will make any other necessary orders.

22. Additional information can be found in the Inns of Court College of Advocacy training document "Advocacy and the vulnerable: 20 principles of questioning". This document is part of a suite of training materials available to assist advocates in dealing with questioning vulnerable victims in the criminal justice system.

Court of Appeal guidance on questioning children of tender years and witnesses who are vulnerable as a result of mental incapacity

In a series of decisions the Court of Appeal has made it clear that there has to be a different and fresh approach to the cross-examination of, in particular, children of tender years, and witnesses who are vulnerable as a result of mental incapacity. The following propositions have support in decisions on appeal: (*R v B 2010 EWCA Crim 4; R v F 2013 EWCA Crim 424; Wills v R 2011 EWCA Crim 1938; R v Edwards 2011 EWCA Crim 3028; R v Watts 2010 EWCA Crim 1824; R v W and M 2010 EWCA Crim 1926)*

"The reality of questioning children of tender years is that direct challenge that he or she is wrong or lying could lead to confusion and, worse, to capitulation which the child does not, in reality, accept.

Capitulation is not a consequence of unreliability but a function of the youngster's age. Experience has shown that young children are scared of disagreeing with a mature adult whom they do not wish to confront.

It is common, in the trial of an adult, to hear, once the nursery slopes of cross-examination have been skied, the assertion ' you were never punched or kicked, as you have suggested, were you?'

It was precisely that approach which the Court is anxious to avoid. Such an approach risks confusion in the minds of the witness whose evidence was bound to take centre stage, and it is difficult to see how it can be helpful. We struggle to understand how the defendant's right to a fair trial was in any way compromised simply because Mr X was not allowed to ask the question ' Simon did not punch you in the way you suggest?"

"The overriding objective. The Criminal Procedure Rules objective is that criminal cases be dealt with justly. Dealing with a criminal case justly includes dealing with the case efficiently and expeditiously in ways that take account of the gravity of the offence alleged and the complexity of what is in issue.

In our collective experience the age of a witness is not determinative of his or her ability to give truthful and accurate evidence. Like adults some children will provide truthful and accurate testimony, and some will not. However children are not miniature adults, but children, and to be treated for what they are, not what they will, in the years ahead, grow to be.

There is undoubtedly a danger of a child witness wishing simply to please.

There is undoubtedly a danger of a child witness assenting to what is put rather than disagreeing during the questioning process in an endeavour to bring that process to a speedier conclusion.

It is particularly important in the case of a child witness to keep a question short and simple, and even more important than it is with an adult witness to avoid questions which are rolled up and contain, inadvertently two or three questions at once. It is generally recognised that, particularly with child witnesses, short and untagged questions are best at eliciting the evidence. By untagged we mean questions that do not contain a statement of the answer which is sought. That said, when it comes to directly contradicting a particular statement and inviting the witness to face a directly contradictory suggestion, it may often be difficult to examine otherwise.

No doubt if a way can be found of engaging the witness to tell the story, and the content then differs from what had been said before, that will be a yet better indication that the original account is wrong. But that is difficult to achieve and indeed may itself have the disadvantage of prolonging the child's time giving evidence. Even then there may be no guarantee as to which account is the more reliable.

Most of the questions which produced the answers which were chiefly relied upon, unlike many others, constituted the putting of direct suggestions with an indication of the answer ' this happened didn't it '? Or “this didn't happen, did it?” The consequence of that is that it can be very difficult to tell whether the child is truly changing her account or simply taking the line of least resistance.

At the same time the right of the defendant to a fair trial must be undiminished. When the issue is whether the child is lying or mistaken, when claiming that the defendant behaved indecently towards him or her, it should not be over problematic for the advocate to formulate short, simple questions, which put the essential elements of the defendant’s case to the witness, and fully ventilate before the jury the areas of evidence which bear on the child's credibility.

Aspects of evidence which undermine or are believed to undermine the child's credibility must, of course, be revealed to the jury. However it is not necessarily appropriate for them to form the subject matter of detailed cross-examination of the child, and the advocate may have to forego much of the kind of contemporary cross-examination which consists of no more than comment on matters which will be before the jury, in any event, from different sources.

Notwithstanding some of the difficulties; when all is said and done, the witness whose cross-examination is in contemplation is a child, sometimes very young, and it should not

take very lengthy cross examination to demonstrate, when it is the case, that the child may indeed be fabricating, or fantasising, or imagining, or reciting a well-rehearsed untruthful script, learned by rote; or simply just suggestible, or contaminated by or in collusion with others to make false allegations, or making assertions in language which is beyond his or her level of comprehension; and are therefore likely to be derived from another source. Comment on the evidence, including comment on evidence which may bear adversely on the credibility of the child, should be addressed after the child has finished giving evidence.

Clear limitations have to be imposed on the cross-examination of vulnerable young complainants."

CrimPR Part 19 Expert evidence

19A Expert evidence

CPD V Evidence 19A: EXPERT EVIDENCE

19A.1 Expert opinion evidence is admissible in criminal proceedings at common law if, in summary, (i) it is relevant to a matter in issue in the proceedings; (ii) it is needed to provide the court with information likely to be outside the court's own knowledge and experience; and (iii) the witness is competent to give that opinion.

19A.2 Legislation relevant to the introduction and admissibility of such evidence includes section 30 of the Criminal Justice Act 1988, which provides that an expert report shall be admissible as evidence in criminal proceedings whether or not the person making it gives oral evidence, but that if he or she does not give oral evidence then the report is admissible only with the leave of the court; and CrimPR Part 19 , which in exercise of the powers conferred by section 81 of the Police and Criminal Evidence Act 1984 and section 20 of the Criminal Procedure and Investigations Act 1996 requires the service of expert evidence in advance of trial in the terms required by those rules.

19A.3 In the Law Commission report entitled 'Expert Evidence in Criminal Proceedings in England and Wales', report number 325, published in March, 2011, the Commission recommended a statutory test for the admissibility of expert evidence. However, in its response the government declined to legislate. The common law, therefore, remains the source of the criteria by reference to which the court must assess the admissibility and weight of such evidence; and CrimPR 19.4 lists those matters with which an expert's report must deal, so that the court can conduct an adequate such assessment.

19A.4 In its judgment in *R v Dlugosz and Others* [2013] EWCA Crim 2, the Court of Appeal observed (at paragraph 11): "It is essential to recall the principle which is applicable, namely in determining the issue of admissibility, the court must be satisfied that there is a sufficiently reliable scientific basis for the evidence to be admitted. If there is then the court leaves the opposing views to be tested before the jury." Nothing at common law precludes assessment by the court of the reliability of an expert opinion by reference to substantially similar factors to those the Law Commission recommended as conditions of admissibility, and courts are encouraged actively to enquire into such factors.

19A.5 Therefore factors which the court may take into account in determining the reliability of expert opinion, and especially of expert scientific opinion, include:

(a) the extent and quality of the data on which the expert's opinion is based, and the validity of the methods by which they were obtained;

(b) if the expert's opinion relies on an inference from any findings, whether the opinion properly explains how safe or unsafe the inference is (whether by reference to statistical significance or in other appropriate terms);

(c) if the expert's opinion relies on the results of the use of any method (for instance, a test, measurement or survey), whether the opinion takes proper account of matters, such as the degree of precision or margin of uncertainty, affecting the accuracy or reliability of those results;

(d) the extent to which any material upon which the expert's opinion is based has been reviewed by others with relevant expertise (for instance, in peer-reviewed publications), and the views of those others on that material;

(e) the extent to which the expert's opinion is based on material falling outside the expert's own field of expertise;

(f) the completeness of the information which was available to the expert, and whether the expert took account of all relevant information in arriving at the opinion (including information as to the context of any facts to which the opinion relates);

(g) if there is a range of expert opinion on the matter in question, where in the range the expert's own opinion lies and whether the expert's preference has been properly explained; and

(h) whether the expert's methods followed established practice in the field and, if they did not, whether the reason for the divergence has been properly explained.

19A.6 In addition, in considering reliability, and especially the reliability of expert scientific opinion, the court should be astute to identify potential flaws in such opinion which detract from its reliability, such as:

(a) being based on a hypothesis which has not been subjected to sufficient scrutiny (including, where appropriate, experimental or other testing), or which has failed to stand up to scrutiny;

(b) being based on an unjustifiable assumption;

(c) being based on flawed data;

(d) relying on an examination, technique, method or process which was not properly carried out or applied, or was not appropriate for use in the particular case; or

(e) relying on an inference or conclusion which has not been properly reached.

19.A7 To assist in the assessment described above, CrimPR 19.3(3)(c) requires a party who introduces expert evidence to give notice of anything of which that party is aware which might reasonably be thought capable of undermining the reliability of the expert's opinion, or detracting from the credibility or impartiality of the expert; and CrimPR 19.2(3)(d) requires the expert to disclose to that party any such matter of which the expert is aware. Examples of matters that should be disclosed pursuant to those rules include (this is not a comprehensive list), both in relation to the expert and in relation to any corporation or other body with which the expert works, as an employee or in any other capacity:

(a) any fee arrangement under which the amount or payment of the expert's fees is in any way dependent on the outcome of the case (see also the declaration required by paragraph 19B.1 of these directions);

(b) any conflict of interest of any kind, other than a potential conflict disclosed in the expert's report (see also the declaration required by paragraph 19B.1 of these directions);

(c) adverse judicial comment;

(d) any case in which an appeal has been allowed by reason of a deficiency in the expert's evidence;

(e) any adverse finding, disciplinary proceedings or other criticism by a professional, regulatory or registration body or authority, including the Forensic Science Regulator;

(f) any such adverse finding or disciplinary proceedings against, or other such criticism of, others associated with the corporation or other body with which the expert works which calls into question the quality of that corporation's or body's work generally;

(g) conviction of a criminal offence in circumstances that suggest:

(i) a lack of respect for, or understanding of, the interests of the criminal justice system (for example, perjury; acts perverting or tending to pervert the course of public justice),

(ii) dishonesty (for example, theft or fraud), or

(iii) a lack of personal integrity (for example, corruption or a sexual offence);

(h) lack of an accreditation or other commitment to prescribed standards where that might be expected;

(i) a history of failure or poor performance in quality or proficiency assessments;

(j) a history of lax or inadequate scientific methods;

(k) a history of failure to observe recognised standards in the expert's area of expertise;

(l) a history of failure to adhere to the standards expected of an expert witness in the criminal justice system.

19A.8 In a case in which an expert, or a corporation or body with which the expert works, has been criticised without a full investigation, for example by adverse comment in the course of a judgment, it would be reasonable to expect those criticised to supply information about the conduct and conclusions of any independent investigation into the incident, and to explain what steps, if any, have been taken to address the criticism.

19A.9 The rules require disclosure of that of which the expert, or the party who introduces the expert evidence, is aware. The rules do not require persistent or disproportionate enquiry, and courts will recognise that there may be occasions on which neither the expert nor the party has been made aware of criticism. Nevertheless, where matters ostensibly within the scope of the disclosure obligations come to the attention of the court without their disclosure by the party who introduces the evidence then that party, and the expert, should expect a searching examination of the circumstances by the court; and, subject to what emerges, the court may exercise its power under section 81 of the Police and Criminal Evidence Act 1984 or section 20 of the Criminal Procedure and Investigations Act 1996 to exclude the expert evidence.

19B Statements of understanding and declarations

CPD V Evidence 19B: STATEMENTS OF UNDERSTANDING AND DECLARATIONS OF TRUTH IN EXPERT REPORTS

19B.1 The statement and declaration required by CrimPR 19.4(j), (k) should be in the following terms, or in terms substantially the same as these:

'I (name) DECLARE THAT:

1. I understand that my duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.

2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.

3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.

4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.

5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.

6. I have shown the sources of all information I have used.

7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.

8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.

9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.

10. I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.

11. I understand that:

(a) my report will form the evidence to be given under oath or affirmation;

(b) the court may at any stage direct a discussion to take place between experts;

(c) the court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with the reasons;

(d) I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert.

(e) I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.

12. I have read Part 19 of the Criminal Procedure Rules and I have complied with its requirements.

13. I confirm that I have acted in accordance with the code of practice or conduct for experts of my discipline, namely *[identify the code]*

14. [For Experts instructed by the Prosecution only] I confirm that I have read guidance contained in a booklet known as *Disclosure: Experts' Evidence and Unused Material* which details my role and documents my responsibilities, in relation to revelation as an expert witness. I have followed the guidance and recognise the continuing nature of my responsibilities of disclosure. In accordance with my duties of disclosure, as documented in the guidance booklet, I confirm that:

(a) I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended;

(b) I have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material;

(c) in the event my opinion changes on any material issue, I will inform the investigating officer, as soon as reasonably practicable and give reasons.

I confirm that the contents of this report are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have wilfully stated anything which I know to be false or that I do not believe to be true.'

19C Pre-hearing discussion of expert evidence

CPD V Evidence 19C: PRE-HEARING DISCUSSION OF EXPERT EVIDENCE

19C.1 To assist the court in the preparation of the case for trial, parties must consider, with their experts, at an early stage, whether there is likely to be any useful purpose in holding an experts' discussion and, if so, when. Under CrimPR 19.6 such pre-trial discussions are not compulsory unless directed by the court. However, such a direction is listed in the magistrates' courts Preparation for Effective Trial form and in the Crown Court Plea and Trial Preparation Hearing form as one to be given by default, and therefore the court can be expected to give such a direction in every case unless persuaded otherwise. Those standard directions include a timetable to which the parties must adhere unless it is varied.

19C.2 The purpose of discussions between experts is to agree and narrow issues and in particular to identify:

(a) the extent of the agreement between them;

(b) the points of and short reasons for any disagreement;

(c) action, if any, which may be taken to resolve any outstanding points of disagreement; and

(d) any further material issues not raised and the extent to which these issues are agreed.

19C.3 Where the experts are to meet, that meeting conveniently may be conducted by telephone conference or live link; and experts' meetings always should be conducted by those means where that will avoid unnecessary delay and expense.

19C.4 Where the experts are to meet, the parties must discuss and if possible agree whether an agenda is necessary, and if so attempt to agree one that helps the experts to focus on the issues which need to be discussed. The agenda must not be in the form of leading questions or hostile in tone. The experts may not be required to avoid reaching agreement, or to defer reaching agreement, on any matter within the experts' competence.

19C.5 If the legal representatives do attend:

(a) they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law; and

(b) the experts may if they so wish hold part of their discussions in the absence of the legal representatives.

19C.6 A statement must be prepared by the experts dealing with paragraphs 19C.2(a) - (d) above. Individual copies of the statements must be signed or otherwise

authenticated by the experts, in manuscript or by electronic means, at the conclusion of the discussion, or as soon thereafter as practicable, and in any event within 5 business days. Copies of the statements must be provided to the parties no later than 10 business days after signing.

19C.7 Experts must give their own opinions to assist the court and do not require the authority of the parties to sign a joint statement. The joint statement should include a brief re-statement that the experts recognise their duties, which should be in the following terms, or in terms substantially the same as these:

'We each DECLARE THAT:

1. We individually here re-state the Expert's Declaration contained in our respective reports that we understand our overriding duties to the court, have complied with them and will continue to do so.

2. We have neither jointly nor individually been instructed to, nor has it been suggested that we should, avoid reaching agreement, or defer reaching agreement, on any matter within our competence.'

19C.8 If an expert significantly alters an opinion, the joint statement must include a note or addendum by that expert explaining the change of opinion.

CrimPR Part 21 Evidence of bad character

21A Spent convictions

CPD V Evidence 21A: SPENT CONVICTIONS

21A.1 The effect of section 4(1) of the Rehabilitation of Offenders Act 1974 is that a person who has become a rehabilitated person for the purpose of the Act in respect of a conviction (known as a 'spent' conviction) shall be treated for all purposes in law as a person who has not committed, or been charged with or prosecuted for, or convicted of or sentenced for, the offence or offences which were the subject of that conviction.

21A.2 Section 4(1) of the 1974 Act does not apply, however, to evidence given in criminal proceedings: section 7(2)(a). During the trial of a criminal charge, reference to previous convictions (and therefore to spent convictions) can arise in a number of ways. The most common is when a bad character application is made under the Criminal Justice Act 2003. When considering bad character applications under the 2003 Act, regard should always be had to the general principles of the Rehabilitation of Offenders Act 1974.

21A.3 On conviction, the court must be provided with a statement of the defendant's record for the purposes of sentence. The record supplied should contain all previous convictions, but those which are spent should, so far as practicable, be marked as such. No one should refer in open court to a spent conviction without the authority of the judge, which authority should not be given unless the interests of justice so require. When passing sentence the judge should make no reference

to a spent conviction unless it is necessary to do so for the purpose of explaining the sentence to be passed.

22A Use of Ground Rules Hearing when dealing with s.41 Youth Justice and Criminal Evidence Act 1999 evidence of complainant's previous sexual behaviour

CPD V Evidence 22A: USE OF GROUND RULES HEARING WHEN DEALING WITH S.41 YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (YJCEA1999) EVIDENCE OF COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR

The application

22A.1 When a defendant wishes to introduce evidence, or cross-examine about the previous sexual behaviour of the complainant, then it is imperative that the timetable and procedure as laid down in the Criminal Procedure Rules Part 22 is followed. The application must be submitted in writing as soon as reasonably practicable and not more than 14 days after the prosecutor has disclosed material on which the application is based. Should the prosecution wish to make any representations then these should be served on the court and other parties not more than 14 days after receiving the application.

22A.2 The application must clearly state the issue to which the defendant says the complainant's sexual behaviour is relevant and the reasons why it should be admitted. It must outline the evidence which the defendant wants to introduce and articulate the questions which it is proposed should be asked. The application must identify the statutory exception to the prohibition in s.41 YJCEA 1999 on which the defendant relies and give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

The hearing

22A.3 When determining the application, the judge should examine the questions with the usual level of scrutiny expected at a ground rules hearing. For each question that it is sought to put to a witness, or evidence it is sought to adduce, the defence should identify clearly for the judge the suggested relevance it has to an issue in the case. In order for the judge to rule on which evidence can be adduced or questions put, the defence must set out individual questions for the judge; merely identifying a topic is not sufficient for this type of application. The judge should make it clear that if the application is granted then no other questions on this topic will be allowed to be asked, unless with the express permission of the court.

22A.4 The application should be dealt with in private and in the absence of the complainant, but the judge must state in open court, without the jury or complainant present, the reasons for the decision, and if leave is granted, the extent of the questions or evidence that is allowed.

Late applications

22A.5 Late applications should be considered with particular scrutiny especially if there is a suggestion of tactical thinking behind the timing of the application and/or when the application is based on material that has been available for some time. If consideration of a late application has the potential to disrupt the timetabling of witnesses, then the judge will need to take account of the potential impact of delay upon a witness who is due to give evidence. If necessary, the judge may defer consideration of any such application until later in the trial

22A.6 By analogy, following the approach adopted by the Court of Appeal in *R v Musone* [2007] 1 WLR 2467, the trial judge is entitled to refuse the application where (s)he is satisfied that the applicant is seeking to manipulate the court process so as to prevent the respondent from being able to prepare an adequate response. This may be the only remedy available to the court to ensure that the fairness of the trial is upheld and will be particularly relevant when the application is made on the day of trial.

22A.7 Where the application has been granted in good time before the trial, the complainant is entitled to be made aware that such evidence is part of the defence case.

At the trial

22A.8 Advocates should be reminded that the questioning must be conducted in an appropriate manner. Any aggressive, repetitive and oppressive questioning will be stopped by the judge. Judges should intervene and stop any attempts to refer to evidence that might have been adduced under s 41, but for which no leave has been given and/or should have formed the basis of a s41 application, but did not do so. When evidence about the complainant's previous sexual behaviour is referred to without an application, the judge may be required to consider whether the impact of that happening is so prejudicial to the overall fairness of the trial that the trial should be stopped and a re-trial should be ordered, should the impact not be capable of being ameliorated by way of jury direction.

23A Cross-examination advocates

CPD V Evidence 23A: CROSS-EXAMINATION ADVOCATES

Provisional appointment of advocate

23A.1 At the first hearing in the court in the case, and in a magistrates' court in particular, there may be occasions on which a defendant has engaged no legal representative, within the meaning of the Criminal Procedure Rules, for the purposes of the case generally, but still intends to do so – for example, where he or she has made an application for legal aid which has yet to be determined. Where the defendant nonetheless has identified a prospective legal representative who has a right of audience in the court; where the court is satisfied that that representative will be willing to cross-examine the relevant

witness or witnesses in the interests of the defendant should it transpire that the defendant will not be represented for the purposes of the case generally; and if the court is in a position there and then to make, contingently, the decision required by section 38(3) of the Youth Justice and Criminal Evidence Act 1999 ('the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused'); then the court may appoint that representative under section 38(4) of the 1999 Act contingently, the appointment to come into effect only if, and when, it is established that the defendant will not be represented for the purposes of the case generally.

23A.2 Where such a provisional appointment is made it is essential that the role and status of the representative is clearly established at the earliest possible opportunity. The court's directions under CrimPR 23.2(3) should require the defendant to notify the court officer, by the date set by the court, whether:

(i) the defendant will be represented by a legal representative for the purposes of the case generally, and if so by whom (in which event the court's provisional appointment has no effect);
(ii) the defendant will not be represented for the purposes of the case generally, but the defendant and the legal representative provisionally appointed by the court remain content with that provisional appointment (in which event the court's provisional appointment takes effect); or
(iii) the defendant will not be represented for the purposes of the case generally, but will arrange for a lawyer to cross-examine the relevant witness or witnesses on his or her behalf, giving that lawyer's name and contact details.

If in the event the defendant fails to give notice by the due date then, unless it is apparent that she or he will, in fact, be represented for the purposes of the case generally, the court may decide to confirm the provisional appointment and proceed accordingly.

Supply of case papers

23A.3 For the advocate to fulfil the duty imposed by the appointment, and to achieve a responsible, professional and appropriate treatment both of the defendant and of the witness, it is essential for the advocate to establish what is in issue. To that end, it is likewise essential for the advocate to have been supplied with the material listed in CrimPR 23.2(7).

23A.4 In the Crown Court, much of this this can be achieved most conveniently by giving the advocate access to the Crown Court Digital Case System. However, material disclosed by the prosecutor to the defendant under section 3 or section 7A of the Criminal Procedure and Investigations Act 1996 is not stored in that system and therefore must be supplied to the advocate either by the defendant or by the prosecutor. In the latter case, the prosecutor reasonably may omit from the copies supplied to the advocate any material that can have no bearing on the cross-examination for which the advocate has been appointed – the medical or social services records of another witness, for example.

23A.5 In a magistrates' court, pending the introduction of comparable electronic arrangements:

i. in some instances the advocate may have received the relevant material at a point at which he or she was acting as the defendant's legal representative subject to a restriction on the purpose or duration of that appointment notified under CrimPR 46.2(5) – for example, pending the outcome of an application for legal aid.

ii. in some instances the defendant may be able to provide spare copies of relevant material. Where that material has been disclosed by the prosecutor under section 3 or section 7A of the Criminal Procedure and Investigations Act 1996 then its supply to the advocate by the defendant is permitted by section 17(2)(a) of the 1996 Act (exception to the prohibition against further disclosure where that further disclosure is 'in connection with the proceedings for whose purposes [the defendant] was given the object or allowed to inspect it').

iii. in some instances the prosecutor may be able to supply the relevant material, or some of it, at no, or minimal, expense by electronic means.

iv. in the event that, unusually, none of those sources of supply is available, then the court's directions under CrimPR 23.2(3) should require the court officer to provide copies from the court's own records, as if the advocate were a party and had applied under CrimPR 5.7.

Obtaining information and observations from the defendant

23A.6 Advocates and courts should keep in mind section 38(5) of the 1999 Act, which provides 'A person so appointed shall not be responsible to the accused.' The advocate therefore cannot and should not take instructions from the defendant, in the usual sense; and to avoid any misapprehension in that respect, either by the defendant or by others, some advocates may prefer to avoid direct oral communication with the defendant before, and even perhaps during, the trial.

23A.7 However, as remarked above at paragraph 23A.3, for the advocate to fulfil the duty imposed by the appointment it is essential for him or her to establish what is in issue; which may require communication with the defendant both before and at the trial as well as a thorough examination of the case papers. CrimPR 23.2(7)(a) in effect requires the advocate to have identified the issues on which the cross-examination of the witness is expected to proceed before the court begins to receive prosecution evidence, and to have taken part in their discussion with the court. To that end, communication with the defendant may be necessary.

Extent of cross-examination advocate's appointment

23A.8 In *Abbas v Crown Prosecution Service* [2015] EWHC 579 (Admin); [2015] 2

Cr.App.R. 11 the Divisional Court observed:

> "The role of a section 38 advocate is, undoubtedly, limited to the proper performance of their duty as a cross examiner of a particular witness. Sections 36 and 38 are all about protecting vulnerable witnesses from cross examination by the accused. Therefore, it should not be thought that an advocate appointed under section 38 has a free ranging remit to conduct the trial on the accused's behalf. Their professional duty and their statutory duty would be to ensure that they are in a position properly to conduct the cross examination. Their duties might include therefore applications to admit bad character of the witness and or applications for disclosure of material relevant to the cross examination. That is as far as one can go. All these matters must be entirely fact specific. The important thing to note is that the section 38 advocate must ensure that s/he performs his/her duties in accordance with the words of the statute.
>
> It means also that their appointment comes to an end, under section 38, at the conclusion of the cross examination, save to the extent that the court otherwise determines. Technically the lawyer no longer has a role in the proceedings thereafter. However, if the lawyer is prepared to stay and assist the defendant on a pro bono basis, I see nothing in the Act and no logical reason why the court should oblige them to leave. The advocate may well prove beneficial to the efficient and fair resolution of the proceedings.
>
> The aim of the legislation as I have said is simply to stop the accused cross examining the witness. It is not to prevent the person appointed to cross examine from playing any other part in the trial."

23A.9 Advocates will be alert to, and courts should keep in mind, the extent of the remuneration available to a cross-examination advocate, in assessing the amount of which the court has only a limited role: see section 19(3) of the Prosecution of Offences Act 1985, which empowers the Lord Chancellor to make regulations authorising payments out of central funds 'to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment', and also sections 19(3ZA) and 20(1A)(d) of the 1985 Act and the Costs in Criminal Cases (General) Regulations 1986, as amended.

23A.10 Advocates and courts must be alert, too, to the possibility that were an advocate to agree to represent a defendant generally at trial, for no payment save that to which such regulations entitled him or her, then the statutory condition precedent for the appointment might be removed and the appointment in consequence withdrawn.

VI Trial

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION VI

TRIAL

CrimPR Part 24 Trial and sentence in a magistrates' court

24A Role of the justices' clerk/legal adviser

CPD VI Trial 24A: ROLE OF THE JUSTICES' CLERK/LEGAL ADVISER

24A.1 The role of the justices' clerk/legal adviser is a unique one, which carries with it independence from direction when undertaking a judicial function and when advising magistrates. These functions must be carried out in accordance with the Bangalore Principles of Judicial Conduct (judicial independence, impartiality, integrity, propriety, ensuring fair treatment and competence and diligence). More specifically, duties must be discharged in accordance with the relevant professional Code of Conduct and the Legal Adviser Competence Framework.

24A.2 A justices' clerk is responsible for:

(a) the legal advice tendered to the justices within the area;

(b) the performance of any of the functions set out below by any member of his staff acting as justices' legal adviser;

(c) ensuring that competent advice is available to justices when the justices' clerk is not personally present in court; and

(d) ensuring that advice given at all stages of proceedings and powers exercised (including those delegated to justices' legal advisers) take into account the court's duty to deal with cases justly and actively to manage the case.

24A.3 Where a person other than the justices' clerk (a justices' legal adviser), who is authorised to do so, performs any of the functions referred to in this direction, he or she will have the same duties, powers and responsibilities as the justices' clerk. The justices' legal adviser may consult the justices' clerk, or other person authorised by the justices' clerk for that purpose, before tendering advice to the bench. If the justices' clerk or that person gives any advice directly to the bench, he or she should give the parties or their advocates an opportunity of repeating any relevant submissions, prior to the advice being given.

24A.4 When exercising judicial powers, a justices' clerk or legal adviser is acting in exactly the same capacity as a magistrate. The justices' clerk may delegate powers to a justices' legal adviser in accordance with the relevant statutory authority. The scheme of delegation must be clear and in writing, so that all justices' legal advisers are certain of the extent of their powers. Once a power is delegated, judicial discretion in an individual case lies with the justices' legal adviser exercising the power. When exercise of a power does not require the consent of

the parties, a justices' clerk or legal adviser may deal with and decide a contested issue or may refer that issue to the court.

24A.5 It shall be the responsibility of the justices' clerk or legal adviser to provide the justices with any advice they require to perform their functions justly, whether or not the advice has been requested, on:

(a) questions of law;

(b) questions of mixed law and fact;

(c) matters of practice and procedure;

(d) the process to be followed at sentence and the matters to be taken into account, together with the range of penalties and ancillary orders available, in accordance with the relevant sentencing guidelines;

(e) any relevant decisions of the superior courts or other guidelines;

(f) the appropriate decision-making structure to be applied in any given case; and

(g) other issues relevant to the matter before the court.

24A.6 In addition to advising the justices, it shall be the justices' legal adviser's responsibility to assist the court, where appropriate, as to the formulation of reasons and the recording of those reasons.

24A.7 The justices' legal adviser has a duty to assist an unrepresented defendant, see CrimPR 9.4(3)(a), 14.3(2)(a) and 24.15(3)(a), in particular when the court is making a decision on allocation, bail, at trial and on sentence.

24A.8 Where the court must determine allocation, the legal adviser may deal with any aspect of the allocation hearing save for the decision on allocation, indication of sentence and sentence.

24A.9 When a defendant acting in person indicates a guilty plea, the legal adviser must explain the procedure and inform the defendant of their right to address the court on the facts and to provide details of their personal circumstances in order that the court can decide the appropriate sentence.

24A.10 When a defendant indicates a not guilty plea but has not completed the relevant sections of the Magistrates' Courts Trial Preparation Form, the legal adviser must either ensure that the Form is completed or, in appropriate cases, assist the court to obtain and record the essential information on the form.

24A.11 Immediately prior to the commencement of a trial, the legal adviser must summarise for the court the agreed and disputed issues, together with the way in which the parties propose to present their cases. If this is done by way of pre-court briefing, it should be confirmed in court or agreed with the parties.

24A.12 A justices' clerk or legal adviser must not play any part in making findings of fact, but may assist the bench by reminding them of the evidence, using any notes of the proceedings for this purpose, and clarifying the issues which are agreed and those which are to be determined.

24A.13 A justices' clerk or legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. A legal adviser has a duty to ensure that every case is conducted justly.

24A.14 When advising the justices, the justices' clerk or legal adviser, whether or not previously in court, should:

(a) ensure that he is aware of the relevant facts; and

(b) provide the parties with an opportunity to respond to any advice given.

24A.15 At any time, justices are entitled to receive advice to assist them in discharging their responsibilities. If they are in any doubt as to the evidence which has been given, they should seek the aid of their legal adviser, referring to his notes as appropriate. This should ordinarily be done in open court. Where the justices request their adviser to join them in the retiring room, this request should be made in the presence of the parties in court. Any legal advice given to the justices other than in open court should be clearly stated to be provisional; and the adviser should subsequently repeat the substance of the advice in open court and give the parties the opportunity to make any representations they wish on that provisional advice. The legal adviser should then state in open court whether the provisional advice is confirmed or, if it is varied, the nature of the variation.

24A.16 The legal adviser is under a duty to assist unrepresented parties, whether defendants or not, to present their case, but must do so without appearing to become an advocate for the party concerned. The legal adviser should also ensure that members of the court are aware of obligations under the Victims' Code.

24A.17 The role of legal advisers in fine default proceedings, or any other proceedings for the enforcement of financial orders, obligations or penalties, is to assist the court. They must not act in an adversarial or partisan manner, such as by attempting to establish wilful refusal or neglect or any other type of culpable behaviour, to offer an opinion on the facts, or to urge a particular course of action upon the justices. The expectation is that a legal adviser will ask questions of the defaulter to elicit information which the justices will require to make an adjudication, such as the explanation for the default. A legal adviser may also advise the justices as to the options open to them in dealing with the case.

24A.18 The performance of a legal adviser is subject to regular appraisal. For that purpose the appraiser may be present in the justices' retiring room. The content of the appraisal is confidential, but the fact that an appraisal has taken place, and the presence of the appraiser in the retiring room, should be briefly explained in open court.

24B Identification for the court of the issues in the case

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, including any relevant legislation or case law relevant to the particular case. 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.

24C Trial adjournment in magistrates' courts

CPD VI Trial 24C: TRIAL ADJOURNMENT IN MAGISTRATES' COURTS

24C.1 Courts are entitled to expect the parties and other participants to adhere to CrimPR 1.2 (The duty of the participants in a criminal case) and to prepare accordingly for the trial to proceed on the date arranged. The court will expect communication between the parties and with the court regarding any issues which are likely to affect the effectiveness of any trial: CrimPR 3.2(2)(b)-(e). In particular, any revision of the information

provided in the preparation for effective trial form must be reported to the court and each other party well in advance of the trial, not at trial or shortly before; and in considering any application to adjourn a trial the court will regard as especially significant any failure in this respect. Any communication should clearly identify the issue and any direction sought and should require reference to a legal adviser or case progression officer. The parties and other participants are entitled to expect the court and its staff to adhere to CrimPR 1.3 (The application by the court of the overriding objective) and to conduct its business accordingly. If relevant Criminal Procedure Rules, Criminal Practice Directions and judicial directions for trial preparation are followed, an effective trial on the date arranged will be the result.

24C.2 In some circumstances during preparation for trial it will become apparent to a party that a trial will not be required. It is in the interests of victims, witnesses, defendants, the court and legal representatives that these decisions are made at the earliest opportunity and that the other party, or parties, and the court are notified immediately. The requirements for an application to vacate a trial fixture are set out at paragraphs 24C.30 to 24C.32 beneath.

24C.3 Where a defendant who previously has pleaded not guilty decides to enter a guilty plea, notice of that decision, and the basis of plea, should be given to the prosecution and court as soon as possible so that a decision can be taken about the need for witnesses to attend (but caution should be exercised before the witnesses' attendance is dispensed with, and usually it will be advisable to set a date for the plea to be taken in advance of the date already set for trial). The sooner that notice of such a plea is given, the greater the reduction in sentence the defendant can expect. The court will expect an explanation for the change of plea to assess the level of credit to be applied.

24C.4 Where a party is unable to comply with a direction within the time set by the court, and that failure will have implications for preparation by another party or for the likelihood of the trial proceeding within the time allocated, the party concerned should advise each other party and the court immediately of the failure and of the anticipated date for compliance: CrimPR 1.2(1)(c) and 3.10(2)(d). Parties are encouraged to communicate with each other to agree alternative dates consistent with maintaining the trial fixture: CrimPR 3.7.

Application to adjourn on day of trial

General principles

24C.5 The court is entitled to expect that trials will start on time with all case management issues dealt with in advance of the trial date. Early engagement between the parties and communication with the court should mean that it is rare for applications to adjourn trials to be made on the day of trial, except in circumstances that could not have been foreseen. However, there will be occasions on which, on the day set for trial, the court

is invited without prior warning to adjourn to another day in consequence of an event or events said to make it unjust to proceed as planned; and in some circumstances it may have been necessary to arrange to hear a contested application to adjourn a trial on the very date on which that trial is due to begin (though before making such arrangements the court should have kept in mind the need to make time available for other cases, too, where the time available for the trial will be abbreviated by the time required to hear the application to adjourn it).

24C.6 Section 10 of the Magistrates' Courts Act 1980 confers a discretionary power to adjourn, and see also CrimPR 24.2(3). The following directions codify and restate procedural principles established in a long line of judgments of the senior courts, to some of which they refer. Therefore these directions supersede those judgments and it is to these directions that magistrates' courts must refer in the first instance.

24C.7 The starting point is that the trial should proceed. The basic approach was explained by Gross LJ in *Director of Public Prosecutions v Petrie* [2015] EWHC 48 (Admin):

" … successive initiatives … have repeatedly exhorted the magistracy and District Bench to case manage robustly and to resist the granting of adjournments. Although there are of course instances where the interests of justice require the grant of an adjournment, this should be a course of last rather than first resort – and after other alternatives have been considered. … It is essential that parties to proceedings in a magistrates' court should proceed on the basis of a need to get matters right first time; any suggestion of a culture readily permitting an opportunity to correct failures of preparation should be firmly dispelled."

24C.8 A magistrates' court may keep in mind that, if appropriate, the court's decision may be re-opened (see CrimPR 24.18), and that avenues of appeal by way of rehearing or of review are open to the parties, including in a case in which it is later discovered that the court has acted on a material mistake of fact (see *R (Director of Public Prosecutions) v Sunderland Magistrates' Court, R (Kharaghan) v City of London Magistrates' Court* [2018] EWHC 229 (Admin)). The court should not be deterred from a prompt and robust determination therefore. Only if there are compelling reasons for doing so will the High Court interfere with the court's exercise of its discretion.

24C.9 In general, the relevant principles relating to trial adjournment are these:

- the court's duty is to deal justly with the case, which includes doing justice between the parties.
- the court must have regard to the need for expedition. Delay is generally inimical to the interests of justice and brings the criminal justice system into disrepute. Proceedings in a magistrates' court should be simple and speedy.

- applications for adjournments should be rigorously scrutinised and the court must have a clear reason for adjourning. To do this, the court must review the history of the case.
- where the prosecutor asks for an adjournment the court must consider not only the interest of the defendant in getting the matter dealt with without delay but also the public interest in ensuring that criminal charges are adjudicated upon thoroughly, with the guilty convicted as well as the innocent acquitted.
- with a more serious charge the public interest that there be a trial will carry greater weight. It is, however, reasonable for the court to expect that parties should have given especially careful attention to the preparation of trials involving serious offences or where the trial has significant implications for victims or witnesses.
- where the defendant asks for an adjournment the court must consider whether he or she will be able to present the defence fully without and, if not, the extent to which his or her ability to do so is compromised.
- the court must consider the consequences of an adjournment and its impact on the ability of witnesses and defendants accurately to recall events.
- the impact of adjournment on other cases. The relisting of one case almost inevitably delays or displaces the hearing of others. The length of the hearing and the extent of delay in other cases will need to be considered.

The relevance of fault

24C.10 As the starting point is that the trial should proceed, a consequence of doing so without adjournment may be that the prosecutor is unable to prove the prosecution case, or that the defendant is unable to explore an issue. That may be a just consequence of inadequate preparation. Even in the absence of fault on the part of either party it may not be in the interests of justice to adjourn, notwithstanding that an imperfect trial may be the result.

24C.11 The reason why the adjournment is required should be examined and if it arises through the fault of the applicant for that adjournment then that weighs against its grant, carrying weight in accordance with the gravity of the fault. For the purposes of this paragraph, the prosecutor and those who investigated the case usually should be treated as one.

24C.12 If the applicant was at fault, was it serious? A fault will be serious if the relevant act or omission has been repeated, especially where it has caused a previous adjournment, or where there is no reasonable explanation for that act or omission. The more serious the default, the less willing the court will be to adjourn.

24C.13 Where a party has been at fault, did the other party, if aware of it, draw attention to that fault promptly and explicitly? CrimPR 1.2(1)(c) imposes a collective responsibility on participants promptly to draw attention to a significant failure to take a required procedural step. CrimPR 3.10(2)(d)

requires each party promptly to inform the court and the other parties of anything that may affect the date or duration of the trial or significantly affect the progress of the case in any other way. If no such action has been taken by a party who could have done so then the court may look less favourably on any application by that same party to adjourn, and especially if that application reasonably might have been made before the trial date.

Length of adjournment

24C.14 Were an adjournment granted, for how long would it need to be? The shorter the necessary adjournment, the less objectionable it will be – although much will depend on the ability of the court to accommodate it without undue impact on other cases. Courts must make every effort to make the adjournment as short as possible, for example by using time vacated by another trial or by conducting the hearing at another court house. In some cases it may be possible to achieve a just outcome by a short adjournment to later on the same day.

24C.15 If the reason for the application to adjourn is that the applicant party seeks more time in which to raise or explore an issue, has that party reasonable grounds for its late identification despite the requirements of CrimPR 3.3(1) read with 3.2(2) (early identification of issues)? In the absence of such grounds, that failure will constitute a fault for the purposes of these directions.

Particular grounds of applications to adjourn trials

24C.16 The following paragraphs identify some particular factors which may need to be taken into account in addition to those identified in paragraphs 24C.5 – 24C15.

Absence of defendant

24C.17 If a defendant has attained the age of 18 years, the court shall proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so: section 11 of the Magistrates' Courts Act 1980. In marked contrast to the position in the Crown Court, in magistrates' courts proceeding in the absence of a defendant is the default position where the defendant is aware of the date of trial and no acceptable reason is offered for that absence. The court is not obliged to investigate if no reason is offered. In assessing where the interests of justice lie the court will take into account all factors, including such reasons for absence as may be offered; the reliability of the information supplied in support of those reasons; the date on which the reasons for absence became known to the defendant; and what action the defendant thereafter took in response. Where the defendant provides a medical note to excuse his or her non-attendance the court must consider 5C of these Practice Directions (issue of medical certificates) and give reasons if deciding to proceed notwithstanding.

24C.18 If the court does not proceed to trial in the absence of the defendant it is required by the 1980 Act to give its reasons, which must be specific to the case: section 11(7), and see also CrimPR 24.16(h).

24C.19 Where a defendant is under 18, there is no presumption that the court should proceed in absence. In deciding whether it is in the interests of justice to proceed the court should take into account:

- that trial in absence can and sometimes does result in acquittal and that it is in nobody's interests to delay an acquittal;
- that if convicted the defendant can ask that the conviction be re-opened in the interests of justice, for example if absence was involuntary;
- that if convicted the defendant has a right to a rehearing on appeal to the Crown Court;
- the age, vulnerability, or experience of the defendant;
- whether a parent or guardian is present, whether a parent or guardian ordinarily would be required to attend and whether such a person has attended a previous hearing;
- the interests of any co-defendant in the case proceeding;
- the interests of witnesses who have attended, including the age of any such witness;
- the nature of the evidence and whether memories of relevant evidence are liable to fade;
- how soon an adjourned trial can be accommodated in the court list.

When proceeding in absence or adjourning the court must give its reasons.

Absence of witness

24C.20 Where the court is asked to adjourn because a witness has failed to attend, the court must:

- rigorously investigate the steps taken to secure that witness' attendance, the reasons given for absence and the likelihood of the witness attending should the case be adjourned;
- consider the relevance of the witness to the case, and whether the witness' statement can be agreed or admitted, in whole or part, as hearsay, including under section 114(1)(d) of the Criminal Justice Act 2003;
- in the case of a defence witness, consider whether proper notice has been given of the intention to call that witness;
- consider whether an absent witness can be heard later in the trial;
- where other witnesses have attended and the court has determined that the absent witness is required, consider hearing those witnesses who are present and adjourning the case part-heard, provided the next hearing can be held conveniently in a matter of days or weeks, not months, to avoid having to recall all the witnesses.

Failure to serve evidence in time

24C.21 It should rarely be the case that an application to adjourn based on a failure to serve evidence is made on the day of trial. The court is entitled to expect that evidence will have been served in good time and in

accordance with the directions of the court. The court should consider whether the party who complains of the failure had drawn attention to it: CrimPR 1.2(1)(c) and 3.10(2)(d), and see paragraphs 24C.10 – 24C.13 above.

24C.22 The court must conduct a rigorous inquiry into the nature of the evidence and must consider whether any of what is sought has been served, and if so when; the volume and the significance of what is sought; and the time likely to be needed for its consideration. In particular, the court must satisfy itself that any material still sought is relevant and that the party seeking it has a right to it. In some circumstances a failure to serve evidence can be addressed by refusing to admit it instead of by adjourning the trial to allow it to be served: see *R v Boardman* [2015] EWCA Crim 175; [2015] 1 Cr. App. R. 33; [2015] Crim. L.R. 451.

Failure to comply with disclosure obligations

24C.23 The parties' disclosure obligations arise from the Criminal Procedure and Investigations Act 1996. The procedure to comply with those duties is set out at CrimPR Part 15. Disclosure is not a trial issue. It should have been resolved by the parties complying with their statutory obligations and with the Rules in advance of the trial.

24C.24 Where a defendant complains of a prosecution failure to disclose material that ought to have been disclosed the court must first establish whether either party is applying for an adjournment as a result. If an adjournment is sought, the court should consider whether the matter can be resolved by the giving of disclosure immediately. If it cannot, the court should consider whether the parties have complied with their obligations under CrimPR 3.3 and under the provisions listed in paragraph 24C.1 above, and should consider the relevance of fault.

24C.25 If the prosecutor has complied or purported to comply with his or her initial disclosure obligations, no further material is disclosable and consequently no application to adjourn should be entertained unless the defendant has served a defence statement in accordance with section 6 of the Criminal Procedure and Investigations Act 1996 and CrimPR 15.4.

24C.26 If the defendant has served a defence statement and asks for further disclosure, in consequence of the prosecutor's allegedly inadequate response or in consequence of a failure to respond at all, the court has no power to entertain an application for that further disclosure unless it is made pursuant to section 8 of the Criminal Procedure and Investigations Act 1996 and CrimPR 15.5. The court should consider hearing such an application immediately, provided that there is sufficient time available for the application itself and then for the defence to consider any material disclosed in consequence of it.

Managing trials within available court time

24C.27 Where there is a risk of a trials being adjourned for lack of court time the court or legal adviser must assess the priority to be assigned to each trial listed for hearing that day based on the needs of the parties, whether the case has been adjourned before and the seriousness of the offence; giving priority to any cases in which the defendant is in custody by reason only of a trial due to be heard that day. Where more than one court is sitting to deal with trials, liaison between courtrooms should occur to determine the potential for all listed trials to be heard through movement of cases. Where a case is moved from one courtroom to another and as a result is assigned to a different advocate, the court must allow the fresh advocate adequate time in which to prepare. Courts should always begin a trial by reviewing the need for witnesses and the timetable set during pre-trial case management. The court will be slow to adjourn a trial until it is clear that all other trials assessed as having an equal or higher priority for hearing that day will be effective.

24C.28 The court is entitled to expect that parties will present their case within the time set during pre-trial case management. In entertaining additional applications for which no time has been allowed the court must keep in mind the expectation that the trial will be completed within the allocated time with minimal impact on other cases.

24C.29 While it is preferable to complete a trial on the date allocated, there will be occasions on which it is appropriate to adjourn part-heard, particularly where it is possible to hear the majority of witnesses. If necessary future listings will be moved to accommodate the hearing.

Applications to vacate trials

24C.30 To make the best use of the court's and the parties' time it is expected that applications to vacate trials will be made promptly and in writing, in advance of the date of trial. Any application should be served on each other party at the same time as it is served on the court. As a general rule, such an application will be dealt with outside the courtroom under CrimPR 3.5. An application to vacate a trial will be considered in accordance with the same principles as those identified in paragraphs 24C.5 – 24C.26 of these Directions.

24C.31 Given the binding nature of any decision on an application to vacate and refix a trial, absent a change of circumstances, it is incumbent on the parties to provide full and accurate information to the court to enable it to assess where the interests of justice lie: see *R (on the application of F and another) v Knowsley Magistrates Court* [2006] EWHC 695 (Admin); *R (Jones) v South East Surrey Local Justice Area* [2010] EWHC 916 (Admin), (2010) 174 JP 342; *DPP v Woods* [2017] EWHC 1070 (Admin). Any application should, as a minimum, include (as should, as appropriate, any response):

- the reason for the application;

- a chronology of the case, recording the dates of compliance with any directions and of communication between the parties;
- an assessment of the interests of justice, addressing the factors identified in these Practice Directions and indicating the likely effect should the court conclude that the trial should proceed on the date fixed;
- any restrictions on the future availability of witnesses;
- any likely changes to the number of witnesses or the way in which the evidence will be presented and any impact on the trial time estimate.

24C.32 On receipt of an application each other party should serve that party's response on the court and on the applicant within 2 business days unless the court otherwise directs. Any request for the matter to be determined at a hearing should be served with the application to vacate the trial or with the response to that application, as the case may be, together with the reasons for that request, to enable the court to decide whether a hearing is needed.

CrimPR Parts 25 and 26 Trial and sentence in the Crown Court; Jurors

25A Identification for the jury of the issues in the case

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.

25B Trial adjournment in the crown court

CPD VI Trial 25B: TRIAL ADJOURNMENT IN THE CROWN COURT

25B.1 A defendant has a right, in general, to be present and to be represented at his trial. However, a defendant may choose not to exercise those rights, such as by voluntarily absenting himself and failing to instruct his lawyers adequately so that they can represent him.

25B.2 The court has a discretion as to whether a trial should take place or continue in the defendant's absence and must exercise its discretion with due regard for the interests of justice. The overriding concern must be to ensure that such a trial is as fair as circumstances permit and leads to a just outcome. If the defendant's absence is due to involuntary illness or incapacity it would very rarely be right to exercise the discretion in favour of commencing or continuing the trial.

25B.3 Proceeding in the absence of a defendant is a step which ought normally to be taken only if it is unavoidable. The court must exercise its discretion as to whether a trial should take place or continue in the defendant's absence with the utmost care and caution. Due regard should be had to the judgment of Lord Bingham in *R v Jones (Anthony William)* [2002] UKHL 5, [2003] 1 A.C. 1, [2002] 2 Cr. App. R. 9. Circumstances to be taken into account before proceeding include:

i) the conduct of the defendant,
ii) the disadvantage to the defendant,
iii) the public interest, taking account of the inconvenience and hardship to witnesses, and especially to any complainant, of a delay; if the witnesses have attended court and are ready to give evidence, that will weigh in favour of continuing with the trial,
iv) the effect of any delay,
v) whether the attendance of the defendant could be secured at a later hearing, and
vii) the likely outcome if the defendant is found guilty.

Even if the defendant is voluntarily absent, it is still generally desirable that he or she is represented.

26A Juries: introduction

CPD VI Trial 26A: JURIES: INTRODUCTION

26A.1 Jury service is an important public duty which individual members of the public are chosen at random to undertake. As the Court has acknowledged: "Jury service is not easy; it never has been. It involves a major civic responsibility" (*R v Thompson* [2010] EWCA Crim 1623, [9] per Lord Judge CJ, [2011] 1 W.L.R. 200, [2010] 2 Cr. App. R. 27).

Provision of information to prospective jurors

26A.2 HMCTS provide every person summoned as a juror with information about the role and responsibilities of a juror. Prospective jurors are provided with a pamphlet, "Your Guide to Jury Service", and may also view the film "Your Role as a Juror" online at anytime on the Ministry of Justice YouTube site https://www.youtube.com/watch?v=yQGekF-72xQ
There is also information at https://www.gov.uk/jury-service/overview

26B Juries: preliminary matters arising before jury service commences

CPD VI Trial 26B: JURIES: preliminary Matters arising before jury service commences

26B.1 The effect of section 321 of the Criminal Justice Act 2003 was to remove certain categories of persons from those previously ineligible for jury service (the judiciary and others concerned with the administration of justice) and certain other categories ceased to be eligible for excusal as of right, (such as members of Parliament and medical professionals). The normal presumption is that everyone, unless ineligible or disqualified, will be required to serve when summoned to do so.

Excusal and deferral

26B.2 The jury summoning officer is empowered to defer or excuse individuals in appropriate circumstances and in accordance with the HMCTS *Guidance for summoning officers when considering deferral and excusal applications* (2009): http://www.official-documents.gov.uk/document/other/9780108508400/9780108508400.pdf

Appeals from officer's refusal to excuse or postpone jury service

26B.3 CrimPR 26.1 governs the procedure for a person's appeal against a summoning officer's decision in relation to excusal or deferral of jury service.

Provision of information at court

26B.4 The court officer is expected to provide relevant further information to jurors on their arrival in the court centre.

26C Juries: eligibility

CPD VI Trial 26C: JURIES: ELIGIBILITY

English language ability

26C.1 Under the Juries Act 1974 section 10, a person summoned for jury service who applies for excusal on the grounds of insufficient understanding of English may, where necessary, be brought before the judge.

26C.2 The court may exercise its power to excuse any person from jury service for lack of capacity to act effectively as a juror because of an insufficient understanding of English.

26C.3 The judge has the discretion to stand down jurors who are not competent to serve by reason of a personal disability: *R v Mason* [1981] QB 881, (1980) 71 Cr. App. R. 157; *R v Jalil* [2008] EWCA Crim 2910, [2009] 2 Cr. App. R. (S.) 40.

Jurors with professional and public service commitments

26C.4 The legislative change in the Criminal Justice Act 2003 means that more individuals are eligible to serve as jurors, including those previously excused as of right or ineligible. Judges need to be vigilant to the need to exercise their discretion to adjourn a trial, excuse or discharge a juror should the need arise.

26C.5 Whether or not an application has already been made to the jury summoning officer for deferral or excusal, it is also open to the person summoned to apply to the court to be excused. Such applications must be considered with common sense and according to the interests of justice. An explanation should be required for an application being much later than necessary.

Serving police officers, prison officers or employees of prosecuting agencies

26C.6 A judge should always be made aware at the stage of jury selection if any juror in waiting is in these categories. The juror summons warns jurors in these categories that they will need to alert court staff.

26C.7 In the case of police officers an inquiry by the judge will have to be made to assess whether a police officer may serve as a juror. Regard should be had to: whether evidence from the police is in dispute in the case and the extent to which that dispute involves allegations made against the police; whether the potential juror knows or has worked with the officers involved in the case; whether the potential juror has served or continues to serve in the same police units within the force as those dealing with the investigation of the case or is likely to have a shared local service background with police witnesses in a trial.

26C.8 In the case of a serving prison officer summoned to a court, the judge will need to inquire whether the individual is employed at a prison linked to that court or is likely to have special knowledge of any person involved in a trial.

26C.9 The judge will need to ensure that employees of prosecuting authorities do not serve on a trial prosecuted by the prosecuting authority by which they are employed. They can serve on a trial prosecuted by another prosecuting authority: *R v Abdroikov* [2007] UKHL 37, [2007] 1 W.L.R. 2679, [2008] 1 Cr. App. R. 21; *Hanif v UK* [2011] ECHR 2247, (2012) 55 E.H.R.R. 16; *R v L* [2011] EWCA Crim 65, [2011] 1 Cr. App. R. 27. Similarly, a serving police officer can serve where there is no particular link between the court and the station where the police officer serves.

26C.10 Potential jurors falling into these categories should be excused from jury service unless there is a suitable alternative court/trial to which they can be transferred.

26D Juries: precautionary measures before swearing

CPD VI Trial 26D: JURIES: PRECAUTIONARY MEASURES BEFORE SWEARING

26D.1 There should be a consultation with the advocates as to the questions, if any, it may be appropriate to ask potential jurors. Topics to be considered include:

a. the availability of jurors for the duration of a trial that is likely to run beyond the usual period for which jurors are summoned;

b. whether any juror knows the defendant or parties to the case;

c. whether potential jurors are so familiar with any locations that feature in the case that they may have, or come to have, access to information not in evidence;

d. in cases where there has been any significant local or national publicity, whether any questions should be asked of potential jurors.

26D.2 Judges should however exercise caution. At common law a judge has a residual discretion to discharge a particular juror who ought not to be serving, but this discretion can only be exercised to prevent an individual juror who is not competent from serving. It does not include a discretion to discharge a jury drawn from particular sections of the community or otherwise to influence the overall composition of the jury. However, if there is a risk that there is widespread local knowledge of the defendant or a witness in a particular case, the judge may, after hearing submissions from the advocates, decide to exclude jurors from particular areas to avoid the risk of jurors having or acquiring personal knowledge of the defendant or a witness.

Length of trial

26D.3 Where the length of the trial is estimated to be significantly longer than the normal period of jury service, it is good practice for the trial judge to enquire whether the potential jurors on the jury panel foresee any difficulties with the length and if the judge is satisfied that the jurors' concerns are justified, he may say that they are not required for that particular jury. This does not mean that the judge must excuse the juror from sitting at that court altogether, as it may well be possible for the juror to sit on a shorter trial at the same court.

Juror with potential connection to the case or parties

26D.4 Where a juror appears on a jury panel, it will be appropriate for a judge to excuse the juror from that particular case where the potential juror is personally

concerned with the facts of the particular case, or is closely connected with a prospective witness. Judges need to exercise due caution as noted above.

26E Juries: swearing in jurors

CPD VI Trial 26E: JURIES: SWEARING IN JURORS

Swearing Jury for trial

26E.1 All jurors shall be sworn or affirm. All jurors shall take the oath or affirmation in open court in the presence of one another. If, as a result of the juror's delivery of the oath or affirmation, a judge has concerns that a juror has such difficulties with language comprehension or reading ability that might affect that juror's capacity to undertake his or her duties, bearing in mind the likely evidence in the trial, the judge should make appropriate inquiry of that juror.

Form of oath or affirmation

26E.2 Each juror should have the opportunity to indicate to the court the Holy Book on which he or she wishes to swear. The precise wording will depend on his or her faith as indicated to the court.

26E.3 Any person who prefers to affirm shall be permitted to make a solemn affirmation instead. The wording of the affirmation is: 'I do solemnly, sincerely and truly declare and affirm that I will faithfully try the defendant and give a true verdict according to the evidence'.

26F Juries: ensuring an effective jury panel

CPD VI Trial 26F: JURIES: ENSURING AN EFFECTIVE JURY PANEL

Adequacy of numbers

26F.1 By section 6 of the Juries Act 1974, if it appears to the court that a jury to try any issue before the court will be, or probably will be, incomplete, the court may, if the court thinks fit, require any persons who are in, or in the vicinity of, the court, to be summoned (without any written notice) for jury service up to the number needed (after allowing for any who may not be qualified under section 1 of the Act, and for excusals and challenges) to make up a full jury.

26G Juries: preliminary instructions to jurors

CPD VI Trial 26G: JURIES: PRELIMINARY INSTRUCTIONS TO JURORS

26G.1 After the jury has been sworn and the defendant has been put in charge the judge will want to give directions to the jury on a number of matters.

26G.2 Jurors can be expected to follow the instructions diligently. As the Privy Council stated in *Taylor* [2013] UKPC 8, [2013] 1 W.L.R. 1144:

> The assumption must be that the jury understood and followed the direction that they were given: ... the experience of trial judges is that juries perform their duty according to law. ...[T]he law proceeds on the footing that the jury, acting in accordance with the instructions given to them by the trial judge, will render a true verdict in accordance with the evidence. To conclude otherwise would be to underrate the integrity of the system of trial by jury and the effect on the jury of the instructions by the trial judge.

At the start of the trial

26G.3 Trial judges should instruct the jury on general matters which will include the time estimate for the trial and normal sitting hours. The jury will always need clear guidance on the following:

i. The need to try the case only on the evidence and remain faithful to their oath or affirmation;

ii. The prohibition on internet searches for matters related to the trial, issues arising or the parties;

iii. The importance of not discussing any aspect of the case with anyone outside their own number or allowing anyone to talk to them about it, whether directly, by telephone, through internet facilities such as Facebook or Twitter or in any other way;

iv. The importance of taking no account of any media reports about the case;

v. The collective responsibility of the jury. As the Lord Chief Justice made clear in *R v Thompson and Others* [2010] EWCA Crim 1623, [2011] 1 W.L.R. 200, [2010] 2 Cr. App. R. 27:

> [T]here is a collective responsibility for ensuring that the conduct of each member is consistent with the jury oath and that the directions of the trial judge about the discharge of their responsibilities are followed…. The collective responsibility of the jury for its own conduct must be regarded as an integral part of the trial itself.

vi. The need to bring any concerns, including concerns about the conduct of other jurors, to the attention of the judge at the time, and not to wait until the case is concluded. The point should be made that, unless that is done while the case is continuing, it may not be possible to deal with the problem at all.

Subsequent reminder of the jury instructions

26G.4 Judges should consider reminding jurors of these instructions as appropriate at the end of each day and in particular when they separate after retirement.

26G.5 Following the judge's direction to the jury, each member of the jury must be provided with a copy of the notice "Your Legal Responsibilities as a Juror". This notice outlines what is required of the juror during and after their time on the jury. It is not a substitute for the judge's direction, but is designed to reinforce what the judge has outlined in the direction. The court clerk should ensure a record is made of service of the notice. Jurors are advised to keep their copy of the notice with their summons and at the end of the trial, they are allowed to retain it for future information.

26H Juries: discharge of a juror for personal reasons

CPD VI Trial 26H: JURIES: DISCHARGE OF A JUROR FOR PERSONAL REASONS

26H.1 Where a juror unexpectedly finds him or herself in difficult professional or personal circumstances during the course of the trial, the juror should be encouraged to raise such problems with the trial judge. This might apply, for example, to a parent whose childcare arrangements unexpectedly fail, or a worker who is engaged in the provision of services the need for which can be critical, or a Member of Parliament who has deferred their jury service to an apparently more convenient time, but is unexpectedly called back to work for a very important reason. Such difficulties would normally be raised through a jury note in the normal manner.

26H.2 In such circumstances, the judge must exercise his or her discretion according to the interests of justice and the requirements of each individual case. The judge must decide for him or herself whether the juror has presented a sufficient reason to interfere with the course of the trial. If the juror has presented a sufficient reason, in longer trials it may well be possible to adjourn for a short period in order to allow the juror to overcome the difficulty.

26H.3 In shorter cases, it may be more appropriate to discharge the juror and to continue the trial with a reduced number of jurors. The power to do this is implicit in section 16(1) of the Juries Act 1974. In unusual cases (such as an unexpected emergency arising overnight) a juror need not be discharged in open court. The good administration of justice depends on the co-operation of jurors, who perform an essential public service. All such applications should be dealt with sensitively and sympathetically and the trial judge should always seek to meet the interests of justice without unduly inconveniencing any juror.

26J Juries: views

CPD VI Trial 26J: JURIES: VIEWS

26J.1 In each case in which it is necessary for the jury to view a location, the judge should produce ground rules for the view, after discussion with the advocates. The rules should contain details of what the jury will be shown and in what order and who, if anyone, will be permitted to speak and what will be said. The rules should also make provision for the jury to ask questions and receive a response from the judge, following submissions from the advocates, while the view is taking place.

26K Juries: directions to jury before retirement

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.

26L Juries: jury access to exhibits and evidence in retirement

CPD VI Trial 26L: JURIES: JURY ACCESS TO EXHIBITS AND EVIDENCE IN RETIREMENT

26L.1 At the end of the summing up it is also important that the judge informs the jury that any exhibits they wish to have will be made available to them.

26L.2 Judges should invite submissions from the advocates as to what material the jury should retire with and what material before them should be removed, such as the transcript of an ABE interview (which should usually be removed from the jury as soon as the recording has been played.)

26L.3 Judges will also need to inform the jury of the opportunity to view certain audio, DVD or CCTV evidence that has been played (excluding, for example ABE interviews). If possible, it may be appropriate for the jury to be able to view any such material in the jury room alone, such as on a sterile laptop, so that they can discuss it freely; this will be a matter for the judge's discretion, following discussion with counsel.

26M Jury Irregularities

CPD VI Trial 26M: JURIES: JURY IRREGULARITIES

26M.1 This practice direction replaces the protocol regarding jury irregularities issued by the President of the Queen's Bench Division in November 2012, and the subsequent practice direction, in light of sections 20A to 20D of the Juries Act 1974 and the associated repeal of section 8 of the Contempt of Court Act 1981 (confidentiality of jury's deliberations).

It applies to juries sworn on or after 13 April 2015.

26M.2 A jury irregularity is anything that may prevent one or more jurors from remaining faithful to their oath or affirmation to 'faithfully try the defendant and give a true verdict according to the evidence.' Jury irregularities take many forms. Some are clear-cut such as a juror conducting research about the case or an attempt to suborn or intimidate a juror. Others are less clear-cut – for example, when there is potential bias or friction between jurors.

26M.3 A jury irregularity may involve contempt of court and / or the commission of an offence by or in relation to a juror.

26M.4 Under the previous version of this practice direction, the Crown Court required approval from the Vice-President of the Court of Appeal (Criminal Division) (CACD) prior to providing a juror's details to the police for the purposes of an investigation into a jury irregularity. Such approval is no longer required. Provision of a juror's details to the police is now a matter for the Crown Court.

JURY IRREGULARITY DURING TRIAL

26M.5 A jury irregularity that comes to light during a trial may impact on the conduct of the trial. It may also involve contempt of court and / or the commission of an offence by or in relation to a juror. **The primary concern of the judge should be the impact on the trial.**

26M.6 A jury irregularity should be drawn to the attention of the judge in the absence of the jury as soon as it becomes known.

26M.7 **When the judge becomes aware of a jury irregularity, the judge should follow the procedure set out below:**

STEP 1: Consider isolating juror(s)

STEP 2: Consult with advocates

STEP 3: Consider appropriate provisional measures (which may include surrender / seizure of electronic communications devices and taking defendant into custody)

STEP 4: Seek to establish basic facts of jury irregularity

STEP 5: Further consult with advocates

STEP 6: Decide what to do in relation to conduct of trial

STEP 7: Consider ancillary matters (contempt in face of court and / or commission of criminal offence)

STEP 1: Consider isolating juror(s)

26M.8 The judge should consider whether the juror(s) concerned should be isolated from the rest of the jury, particularly if the juror(s) may have conducted research about the case.

26M.9 If two or more jurors are concerned, the judge should consider whether they should also be isolated from each other, particularly if one juror has made an accusation against another.

STEP 2: Consult with advocates

26M.10 The judge should consult with the advocates and invite submissions about appropriate provisional measures (Step 3) and how to go about establishing the basic facts of the jury irregularity (Step 4).

26M.11 The consultation should be conducted

- in open court;
- in the presence of the defendant; and
- with all parties represented

unless there is good reason not to do so.

26M.12 If the jury irregularity involves a suspicion about the conduct of the defendant or another party, there may be good reason for the consultation to take place in the absence of the defendant or the other party. There may also be good reason for it to take place in private. If so, the proper location is in the court room, with DARTS recording, rather than in the judge's room.

26M.13 If the jury irregularity relates to the jury's deliberations, the judge should warn all those present that it is an offence to disclose, solicit or obtain information about a jury's deliberations (section 20D(1) of the Juries Act 1974 – see paragraphs 26M.35 to 26M.38 regarding the offence and exceptions). This would include disclosing information about the jury's deliberations divulged in court during consultation with the advocates (Step 2 and Step 5) or when seeking to establish the basic facts of the jury irregularity (Step 4). The judge should emphasise that the advocates, court staff and those in the public gallery would commit the offence by explaining to another what is said in court about the jury's deliberations.

STEP 3: Consider appropriate provisional measures

26M.14 **The judge should consider appropriate provisional measures which may include surrender / seizure of electronic communications devices and taking the defendant into custody.**

- **Surrender / seizure of electronic communications devices**

26M.15 The judge should consider whether to make an order under section 15A(1) of the Juries Act 1974 requiring the juror(s) concerned to surrender electronic communications devices, such as mobile telephones or smart phones.

26M.16 Having made an order for surrender, the judge may require a court security officer to search a juror to determine whether the juror has complied with the order. Section 54A of the Courts Act 2003 contains the court security officer's powers of search and seizure.

26M.17 Section 15A(5) of the Juries Act 1974 provides that it is contempt of court for a juror to fail to surrender an electronic communications device in accordance with an order for surrender (see paragraphs 26M.29 to 26M.30 regarding the procedure for dealing with such a contempt).

26M.18 Any electronic communications device surrendered or seized under these provisions should be kept safe by the court until returned to the juror or handed to the police as evidence.

- **Taking defendant into custody**

26M.19 If the defendant is on bail, and the jury irregularity involves a suspicion about the defendant's conduct, the judge should consider taking the defendant into custody. If that suspicion involves an attempt to suborn or intimidate a juror, the defendant should be taken into custody.

STEP 4: Seek to establish basic facts of jury irregularity

26M.20 The judge should seek to establish the basic facts of the jury irregularity for the purpose of determining how to proceed in relation to the conduct of the trial. The judge's enquiries may involve having the juror(s) concerned write a note of explanation and / or questioning the juror(s). The judge may enquire whether the juror(s) feel able to continue and remain faithful to their oath or affirmation. If there is questioning, each juror should be questioned separately, in the absence of the rest of the jury, unless there is good reason not to do so.

26M.21 In accordance with paragraphs 26M.10 to 26M.13, the enquiries should be conducted in open court; in the presence of the defendant; and with all parties represented unless there is good reason not to do so.

STEP 5: Further consult with advocates

26M.22 The judge should further consult with the advocates and invite submissions about how to proceed in relation to the conduct of the trial and what should be said to the jury (Step 6).

26M.23 In accordance with paragraphs 26M.10 to 26M.13, the consultation should be conducted in open court; in the presence of the defendant; and with all parties represented unless there is good reason not to do so.

STEP 6: Decide what to do in relation to conduct of trial

26M.24 When deciding how to proceed, the judge may take time to reflect.

26M.25 Considerations may include the stage the trial has reached. The judge should be alert to attempts by the defendant or others to thwart the trial. In cases of potential bias, the judge should consider whether a fair minded and informed observer would conclude that there was a real possibility that the juror(s) or jury would be biased (*Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357).

26M.26 **In relation to the conduct of the trial, there are three possibilities:**

1. Take no action and continue with the trial

If so, the judge should consider what, if anything, to say to the jury. For example, the judge may reassure the jury nothing untoward has happened or remind them their verdict is a decision of the whole jury and that they should try to work together. Anything said should be tailored to the circumstances of the case.

2. Discharge the juror(s) concerned and continue with the trial

If so, the judge should consider what to say to the discharged juror(s) and the jurors who remain. All jurors should be warned not to discuss what has happened.

3. Discharge the whole jury

If so, the judge should consider what to say to the jury and they should be warned not to discuss what has happened.

If the judge is satisfied that jury tampering has taken place, depending on the circumstances, the judge may continue the trial without a jury (section 46(3) of the Criminal Justice Act 2003) or order a new trial without a jury (section 46(5) of the Criminal Justice Act 2003). Alternatively, the judge may re-list the trial. If there is a real and present danger of jury tampering in the new trial, the prosecution may apply for a trial without a jury (section 44 of the Criminal Justice Act 2003).

STEP 7: Consider ancillary matters

26M.27 **A jury irregularity may also involve contempt in the face of the court and / or the commission of a criminal offence. The possibilities include the following:**

- **Contempt in the face of the court by a juror**
- **An offence by a juror or a non-juror under the Juries Act 1974**
  Offences that may be committed by jurors are researching the case, sharing research, engaging in prohibited conduct or disclosing information about the jury's deliberations (sections 20A to 20D of the Juries Act 1974). Non-jurors may commit the offence of disclosing, soliciting or obtaining information about the jury's deliberations (section 20D of the Juries Act 1974).

- **An offence by juror or a non-juror other than under the Juries Act 1974** A juror may commit an offence such as assault or theft. A non-juror may commit an offence in relation to a juror such as attempting to pervert the course of justice – for example, if the defendant or another attempts to suborn or intimidate a juror.

- **Contempt in the face of the court by a juror**

26M.28 If a juror commits contempt in the face of the court, the juror's conduct may also constitute an offence. If so, the judge should decide whether to deal with the juror summarily under the procedure for contempt in the face of the court or refer the matter to the Attorney General's Office or the police (see paragraphs 26M.31 and 26M.33).

26M.29 In the case of a *minor and clear* contempt in the face of the court, the judge may deal with the juror summarily. The judge should follow the procedure in CrimPR 48.5 to 48.8. The judge should also have regard to the practice direction regarding contempt of court issued in March 2015 (Practice Direction: Committal for Contempt of Court – Open Court), which emphasises the principle of open justice in relation to proceedings for contempt before all courts.

26M.30 If a juror fails to comply with an order for surrender of an electronic communications device (see paragraphs 26M.15 to 26M.18), the judge should deal with the juror summarily following the procedure for contempt in the face of the court.

- **Offence by a juror or non-juror under the Juries Act 1974**

26M.31 If it appears that an offence under the Juries Act 1974 may have been committed by a juror or non-juror (and the matter has not been dealt with summarily under the procedure for contempt in the face of the court), **the judge** should contact the Attorney General's Office to consider a police investigation, setting out the position neutrally. The officer in the case should not be asked to investigate.

Contact details for the Attorney General's Office are set out at the end of this practice direction.

26M.32 If relevant to an investigation, any electronic communications device surrendered or seized pursuant to an order for surrender should be passed to the police as soon as practicable.

- **Offence by a juror or non-juror other than under the Juries Act 1974**

26M.33 If it appears that an offence, other than an offence under the Juries Act 1974, may have been committed by a juror or non-juror (and the matter has not been dealt with summarily under the procedure for contempt in the face of the court),

the judge or a member of court staff should contact the police setting out the position neutrally. The officer in the case should not be asked to investigate.

26M.34 If relevant to an investigation, any electronic communications device surrendered or seized pursuant to an order for surrender should be passed to the police as soon as practicable.

Other matters to consider

- **Jury deliberations**

26M.35 **In light of the offence of disclosing, soliciting or obtaining information about a jury's deliberations (section 20D(1) of the Juries Act 1974), great care is required if a jury irregularity relates to the jury's deliberations.**

26M.36 *During the trial,* there are exceptions to this offence that enable the judge (and only the judge) to:

- Seek to establish the basic facts of a jury irregularity involving the jury's deliberations (Step 4); and

- Disclose information about the jury's deliberations to the Attorney General's Office if it appears that an offence may have been committed (Step 7).

26M.37 With regard to seeking to establish the basic facts of a jury irregularity involving the jury's deliberations (Step 4), it is to be noted that during the trial it is not an offence for the judge to disclose, solicit or obtain information about the jury's deliberations for the purposes of dealing with the case (sections 20E(2)(a) and 20G(1) of the Juries Act 1974).

26M.38 With regard to disclosing information about the jury's deliberations to the Attorney General's Office if it appears that an offence may have been committed (Step 7), it is to be noted that during the trial:

- It is not an offence for the judge to disclose information about the jury's deliberations for the purposes of an investigation by a relevant investigator into whether an offence or contempt of court has been committed by or in relation to a juror (section 20E(2)(b) of the Juries Act 1974); and

- A relevant investigator means a police force or the Attorney General (section 20E(5) of the Juries Act 1974).

- **Minimum number of jurors**

26M.39 If it is decided to discharge one or more jurors (Step 6), a minimum of nine jurors must remain if the trial is to continue (section 16(1) of the Juries Act 1974).

- **Preparation of statement by judge**

26M.40 If a jury irregularity occurs, and the trial continues, the judge should have regard to the remarks of Lord Hope in *R v Connors and Mirza* [2004] UKHL 2 at [127] and [128], [2004] 1 AC 1118, [2004] 2 Cr App R 8 and consider whether to prepare a statement that could be used in an application for leave to appeal or an appeal relating to the jury irregularity.

JURY IRREGULARITY AFTER JURY DISCHARGED

26M.41 A jury irregularity that comes to light after the jury has been discharged may involve the commission of an offence by or in relation to a juror. It may also provide a ground of appeal.

26M.42 **A jury irregularity after the jury has been discharged may come to the attention of the:**

- **Trial judge or court**
- **Registrar of Criminal Appeals (the Registrar)**
- **Prosecution**
- **Defence**

- **Role of the trial judge or court**

26M.43 The judge has no jurisdiction in relation to a jury irregularity that comes to light after the jury has been discharged (*R v Thompson and others* [2010] EWCA Crim 1623, [2011] 1 WLR 200, [2010] 2 Cr App R 27A). The jury will be deemed to have been discharged when all verdicts on all defendants have been delivered or when the jury has been discharged from giving all verdicts on all defendants.

26M.44 The judge will be *functus officio* in relation to a jury irregularity that comes to light during an adjournment between verdict and sentence. The judge should proceed to sentence unless there is good reason not to do so.

26M.45 In practice, a jury irregularity often comes to light when the judge or court receives a communication from a former juror.

26M.46 If a jury irregularity comes to the attention of a judge or court after the jury has been discharged, and regardless of the result of the trial, the judge or a member of court staff should contact the Registrar setting out the position neutrally. Any communication from a former juror should be forwarded to the Registrar.

Contact details for the Registrar are set out at the end of this practice direction.

- **Role of the Registrar**

26M.47 If a jury irregularity comes to the attention of the Registrar after the jury has been discharged, and regardless of the result of the trial, the Registrar should consider if it appears that an offence may have been committed by or in relation to a juror. The Registrar should also consider if there may be a ground of appeal.

26M. 48 When deciding how to proceed, particularly in relation to a communication from a former juror, the Registrar may seek the direction of the Vice-President of the Court of Appeal (Criminal Division) (CACD) or another judge of the CACD in accordance with instructions from the Vice-President.

26M.49 If it appears that an offence may have been committed by or in relation to a juror, the Registrar should contact the Private Office of the Director of Public Prosecutions to consider a police investigation.

26M.50 If there may be a ground of appeal, the Registrar should inform the defence.

26M.51 If a communication from a former juror is not of legal significance, the Registrar should respond explaining that no action is required. An example of such a communication is if it is restricted to a general complaint about the verdict from a dissenting juror or an expression of doubt or second thoughts.

- **Role of the prosecution**

26M.52 If a jury irregularity comes to the attention of the prosecution after the jury has been discharged, which may provide a ground of appeal, they should notify the defence in accordance with their duties to act fairly and assist in the administration of justice (*R v Makin* [2004] EWCA Crim 1607, 148 SJLB 821).

- **Role of the defence**

26M.53 If a jury irregularity comes to the attention of the defence after the jury has been discharged, which provides an arguable ground of appeal, an application for leave to appeal may be made.

Other matters to consider

- **Jury deliberations**

26M.54 **In light of the offence of disclosing, soliciting or obtaining information about a jury's deliberations (section 20D(1) of the Juries Act 1974), great care is required if a jury irregularity relates to the jury's deliberations.**

26M.55 *After the jury has been discharged,* there are exceptions to this offence that enable a judge, a member of court staff, the Registrar, the prosecution and the defence to disclose information about the jury's deliberations if it appears that

an offence may have been committed by or in relation to a juror or if there may be a ground of appeal.

26M.56 For example, it is to be noted that:

- After the jury has been discharged, it is not an offence for a person to disclose information about the jury's deliberations to defined persons if the person reasonably believes that an offence or contempt of court may have been committed by or in relation to a juror or the conduct of a juror may provide grounds of appeal (section 20F(1) (2) of the Juries Act 1974).

- The defined persons to whom such information may be disclosed are a member of a police force, a judge of the CACD, the Registrar of Criminal Appeals (the Registrar), a judge where the trial took place or a member of court staff where the trial took place who would reasonably be expected to disclose the information only to one of the aforementioned defined persons (section 20F(2) of the Juries Act 1974).

- After the jury has been discharged, it is not an offence for a judge of the CACD or the Registrar to disclose information about the jury's deliberations for the purposes of an investigation by a relevant investigator into whether an offence or contempt of court has been committed by or in relation to a juror or the conduct of a juror may provide grounds of appeal (section 20F(4) of the Juries Act 1974).

- A relevant investigator means a police force, the Attorney General, the Criminal Cases Review Commission (CCRC) or the Crown Prosecution Service (section 20F(10) of the Juries Act 1974).

- **Investigation by the Criminal Cases Review Commission (CCRC)**

26M.57 If an application for leave to appeal, or an appeal, includes a ground of appeal relating to a jury irregularity, the Registrar may refer the case to the Full Court to decide whether to direct the CCRC to conduct an investigation under section 23A of the Criminal Appeal Act 1968.

26M.58 If the Court directs the CCRC to conduct an investigation, directions should be given as to the scope of the investigation.

CONTACT DETAILS

Attorney General's Office

Contempt.SharedMailbox@attorneygeneral.gsi.gov.uk

Telephone: 020 7271 2492

The Registrar

penny.donnelly@hmcts.x.gsi.gov.uk (Secretary) or

criminalappealoffice.generaloffice@hmcts.gsi.gov.uk

Telephone: 020 7947 6103 (Secretary) or 020 7947 6011

26N Open justice

CPD VI Trial 26N: OPEN JUSTICE

26N.1 There must be freedom of access between advocate and judge. Any discussion must, however, be between the judge and the advocates on both sides. If an advocate is instructed by a solicitor who is in court, he or she, too, should be allowed to attend the discussion. This freedom of access is important because there may be matters calling for communication or discussion of such a nature that the advocate cannot, in the client's interest, mention them in open court, e.g. the advocate, by way of mitigation, may wish to tell the judge that reliable medical evidence shows that the defendant is suffering from a terminal illness and may not have long to live. It is imperative that, so far as possible, justice must be administered in open court. Advocates should, therefore, only ask to see the judge when it is felt to be really necessary. The judge must be careful only to treat such communications as private where, in the interests of justice, this is necessary. Where any such discussion takes place it should be recorded, preferably by audio recording.

26P Defendant's right to give or not give evidence

CPD VI Trial 26P: DEFENDANT'S RIGHT TO GIVE OR NOT TO GIVE EVIDENCE

26P.1 At the conclusion of the evidence for the prosecution, section 35(2) of the Criminal Justice and Public Order Act 1994 requires the court to satisfy itself that the defendant is aware that the stage has been reached at which evidence can be given for the defence and that the defendant's failure to give evidence, or if he does so his failure to answer questions, without a good reason, may lead to inferences being drawn against him.

If the defendant is legally represented

26P.2 After the close of the prosecution case, if the defendant's representative requests a brief adjournment to advise his client on this issue the request should, ordinarily, be granted. When appropriate the judge should, in the presence of the jury, inquire of the representative in these terms:

> *'Have you advised your client that the stage has now been reached at which he may give evidence and, if he chooses not to do so or, having been sworn, without good cause refuses to answer any question, the jury may draw such inferences as appear proper from his failure to do so ?'*

26P.3 If the representative replies to the judge that the defendant has been so advised, then the case shall proceed. If counsel replies that the defendant has not been so advised, then the judge shall direct the representative to advise his client of the

consequences and should adjourn briefly for this purpose, before proceeding further.

If the defendant is not legally represented

26P.4 If the defendant is not represented, the judge shall, at the conclusion of the evidence for the prosecution, in the absence of the jury, indicate what he will say to him in the presence of the jury and ask if he understands and whether he would like a brief adjournment to consider his position.

26P.5 When appropriate, and in the presence of the jury, the judge should say to the defendant:

> *'Now is your chance to give evidence if you choose to do so. If you do give evidence it will be on oath [or affirmation], and you will be cross-examined like any other witness. If you do not give evidence the jury may hold it against you. If you do give evidence but refuse without good reason to answer the questions the jury may, as I have just explained, hold that against you. Do you now intend to give evidence?'*

26Q Majority verdicts

CPD VI Trial 26Q: MAJORITY VERDICTS

26Q.1 It is very important that all those trying indictable offences should, so far as possible, adopt a uniform practice when complying with section 17 of the Juries Act 1974, both in directing the jury in summing-up and also in receiving the verdict or giving further directions after retirement. So far as the summing-up is concerned, it is inadvisable for the judge, and indeed for advocates, to attempt an explanation of the section for fear that the jury will be confused.

Before the jury retires, however, the judge should direct the jury in some such words as the following:

"As you may know, the law permits me, in certain circumstances, to accept a verdict which is not the verdict of you all. Those circumstances have not as yet arisen, so that when you retire I must ask you to reach a verdict upon which each one of you is agreed. Should, however, the time come when it is possible for me to accept a majority verdict, I will give you a further direction."

26Q.2 Thereafter, the practice should be as follows:

Should the jury return before two hours and ten minutes has elapsed since the last member of the jury left the jury box to go to the jury room (or such longer time as the judge thinks reasonable) (see section 17(4)), they should be asked:

(a) "Have you reached a verdict upon which you are all agreed? Please answer 'Yes' or 'No'. ";

(b) (i) If unanimous, "What is your verdict?";

(ii) If not unanimous, the jury should be sent out again for further deliberation, with a further direction to arrive if possible at a unanimous verdict.

26Q.3 Should the jury return (whether for the first time or subsequently) or be sent for after the two hours and ten minutes (or the longer period) has elapsed, questions (a) and (b)(i) in the paragraph above should be put to them and, if it appears that they are not unanimous, they should be asked to retire once more and told they should continue to endeavour to reach a unanimous verdict but that, if they cannot, the judge will accept a majority verdict as in section 17(1).

26Q.4 When the jury finally return, they should be asked:

(a) "Have at least ten (or nine as the case may be) of you agreed on your verdict?";

(b) If "Yes", "What is your verdict? Please only answer 'Guilty' or 'Not Guilty'. ";

(c) (i) If "Not Guilty", accept the verdict without more ado;

(ii) If "Guilty", "Is that the verdict of you all, or by a majority?";

(d) If "Guilty" by a majority, "How many of you agreed to the verdict and how many dissented?"

26Q.5 At whatever stage the jury return, before question (a) is asked, the senior officer of the court present shall state in open court, for each period when the jury was out of court for the purpose of considering their verdict(s), the time at which the last member of the jury left the jury box to go to the jury room and the time of their return to the jury box; and will additionally state in open court the total of such periods.

26Q.6 The reason why section 17(3) is confined to a majority verdict of "Guilty", and for the somewhat complicated procedure set out above, is to prevent it being known that a verdict of "Not Guilty" is a majority verdict. If the final direction continues to require the jury to arrive, if possible, at a unanimous verdict and the verdict is received as specified, it will not be known for certain that the acquittal is not unanimous.

26Q.7 Where there are several counts (or alternative verdicts) left to the jury the above practice will, of course, need to be adapted to the circumstances. The procedure will have to be repeated in respect of each count (or alternative verdict), the verdict being accepted in those cases where the jury are unanimous and the further direction being given in cases in which they are not unanimous. The judge may exercise discretion in deciding when to record the unanimous verdict; the circumstances of the case may dictate that it is more desirable to give the majority direction before the recording of any unanimous verdicts. If so, then instead of being asked about each count in turn, the jury should be asked "Have you reached verdicts upon which you are all agreed in respect of all defendants and/or all counts?"

26Q.8 Should the jury in the end be unable to agree on a verdict by the required majority, the judge in his discretion will either ask them to deliberate further, or discharge them.

26Q.9 Section 17 will, of course, apply also to verdicts other than "Guilty" or "Not Guilty", e.g. to special verdicts under the Criminal Procedure (Insanity) Act 1964, following a finding by the judge that the defendant is unfit to be tried, and special verdicts on findings of fact. Accordingly, in such cases the questions to jurors will have to be suitably adjusted.

VII Sentencing

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION VII

SENTENCING

A Pleas of guilty in the Crown Court

CPD VII Sentencing A: PLEAS OF GUILTY IN THE CROWN COURT

A.1 Prosecutors and Prosecution Advocates should be familiar with and follow the Attorney-General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise.

B Determining the factual basis of sentence

CPD VII Sentencing B: DETERMINING THE FACTUAL BASIS OF SENTENCE

Where a guilty plea is offered to less than the whole indictment and the prosecution is minded to accept pleas tendered to some counts or to lesser alternative counts.

B.1 In some cases, defendants wishing to plead guilty will simply plead guilty to all charges on the basis of the facts as alleged and opened by the prosecution, with no dispute as to the factual basis or the extent of offending. Alternatively a defendant may plead guilty to some of the charges brought; in such a case, the judge will consider whether that plea represents a proper plea on the basis of the facts set out by the papers.

B.2 Where the prosecution advocate is considering whether to accept a plea to a lesser charge, the advocate may invite the judge to approve the proposed course of action. In such circumstances, the advocate must abide by the decision of the judge.

B.3 If the prosecution advocate does not invite the judge to approve the acceptance by the prosecution of a lesser charge, it is open to the judge to express his or her dissent with the course proposed and invite the advocate to reconsider the matter with those instructing him or her.

B.4 In any proceedings where the judge is of the opinion that the course proposed by the advocate may lead to serious injustice, the proceedings may be adjourned to allow the following procedure to be followed:

(a) as a preliminary step, the prosecution advocate must discuss the judge's observations with the Chief Crown Prosecutor or the senior prosecutor of the relevant prosecuting authority as appropriate, in an attempt to resolve the issue;

(b) where the issue remains unresolved, the Director of Public Prosecutions or the Director of the relevant prosecuting authority should be consulted;

(c) in extreme circumstances the judge may decline to proceed with the case until the prosecuting authority has consulted with the Attorney General, as may be appropriate.

B.5 Prior to entering a plea of guilty, a defendant may seek an indication of sentence under the procedure set out in *R v Goodyear* [2005] EWCA Crim 888, [2005] 1 W.L.R. 2532, [2005] 2 Cr. App. R. 20; see below.

Where a guilty plea is offered on a limited basis

B.6 A defendant may put forward a plea of guilty without accepting all of the facts as alleged by the prosecution. The basis of plea offered may seek to limit the facts or the extent of the offending for which the defendant is to be sentenced. Depending on the view taken by the prosecution, and the content of the offered basis, the case will fall into one of the following categories:

(a) a plea of guilty upon a basis of plea agreed by the prosecution and defence;

(b) a plea of guilty on a basis signed by the defendant but in respect of which there is no or only partial agreement by the prosecution;

(c) a plea of guilty on a basis that contains within it matters that are purely mitigation and which do not amount to a contradiction of the prosecution case; or

(d) in cases involving serious or complex fraud, a plea of guilty upon a basis of plea agreed by the prosecution and defence accompanied by joint submissions as to sentence.

(a) A plea of guilty upon a basis of plea agreed by the prosecution and defence

B.7 The prosecution may reach an agreement with the defendant as to the factual basis on which the defendant will plead guilty, often known as an "agreed basis of plea". It is always subject to the approval of the court, which will consider whether it adequately and appropriately reflects the evidence as disclosed on the papers, whether it is fair and whether it is in the interests of justice.

B.8 *R v Underwood* [2004] EWCA Crim 2256, [2005] 1 Cr. App. R. 13, [2005] 1 Cr. App. R. (S.) 90 outlines the principles to be applied where the defendant admits that he or she is guilty, but disputes the basis of offending alleged by the prosecution:

(a) The prosecution may accept and agree the defendant's account of the disputed facts or reject it in its entirety, or in part. If the prosecution accepts the defendant's basis of plea, it must ensure that the basis of plea is factually accurate and enables the sentencing judge to impose a sentence appropriate to reflect the justice of the case;

(b) In resolving any disputed factual matters, the prosecution must consider its primary duty to the court and must not agree with or acquiesce in an agreement which contains material factual disputes;

(c) If the prosecution does accept the defendant's basis of plea, it must be reduced to writing, be signed by advocates for both sides, and made available to the judge prior to the prosecution's opening;

(d) An agreed basis of plea that has been reached between the parties should not contain matters which are in dispute and any aspects upon which there is not agreement should be clearly identified;

(e) On occasion, the prosecution may lack the evidence positively to dispute the defendant's account, for example, where the defendant asserts a matter outside the knowledge of the prosecution. Simply because the prosecution does not have evidence to contradict the defendant's assertions does not mean those assertions should be agreed. In such a case, the prosecution should test the defendant's evidence and submissions by requesting a *Newton* hearing (*R v Newton* (1982) 77 Cr. App. R. 13, (1982) 4 Cr. App. R. (S.) 388), following the procedure set out below.

(f) If it is not possible for the parties to resolve a factual dispute when attempting to reach a plea agreement under this part, it is the responsibility of the prosecution to consider whether the matter should proceed to trial, or to invite the court to hold a *Newton* hearing as necessary.

B.9 *R v Underwood* emphasises that, whether or not pleas have been "agreed", the judge is not bound by any such agreement and is entitled of his or her own motion to insist that any evidence relevant to the facts in dispute (or upon which the judge requires further evidence for whatever reason) should be called. Any view formed by the prosecution on a proposed basis of plea is deemed to be conditional on the judge's acceptance of the basis of plea.

B.10 A judge is not entitled to reject a defendant's basis of plea absent a *Newton* hearing unless it is determined by the court that the basis is manifestly false and

as such does not merit examination by way of the calling of evidence or alternatively the defendant declines the opportunity to engage in the process of the *Newton* hearing whether by giving evidence on his own behalf or otherwise.

(b) a plea of guilty on a basis signed by the defendant but in respect of which there is no or only partial agreement by the prosecution

B.11 Where the defendant pleads guilty, but disputes the basis of offending alleged by the prosecution and agreement as to that has not been reached, the following procedure should be followed:

(a) The defendant's basis of plea must be set out in writing, identifying what is in dispute and must be signed by the defendant;

(b) The prosecution must respond in writing setting out their alternative contentions and indicating whether or not they submit that a *Newton* hearing is necessary;

(c) The court may invite the parties to make representations about whether the dispute is material to sentence; and

(d) If the court decides that it is a material dispute, the court will invite such further representations or evidence as it may require and resolve the dispute in accordance with the principles set out in *R v Newton*.

B.12 Where the disputed issue arises from facts which are within the exclusive knowledge of the defendant and the defendant is willing to give evidence in support of his case, the defence advocate should be prepared to call the defendant. If the defendant is not willing to testify, and subject to any explanation which may be given, the judge may draw such inferences as appear appropriate.

B.13 The decision whether or not a *Newton* hearing is required is one for the judge. Once the decision has been taken that there will be a *Newton* hearing, evidence is called by the parties in the usual way and the criminal burden and standard of proof applies. Whatever view has been taken by the prosecution, the prosecutor should not leave the questioning to the judge, but should assist the court by exploring the issues which the court wishes to have explored. The rules of evidence should be followed as during a trial, and the judge should direct himself appropriately as the tribunal of fact. Paragraphs 6 to 10 of *Underwood* provide additional guidance regarding the *Newton* hearing procedure.

(c) a plea of guilty on a basis that contains within it matters that are purely mitigation and which do not amount to a contradiction of the prosecution case

B.14 A basis of plea should not normally set out matters of mitigation but there may be circumstances where it is convenient and sensible for the document outlining a basis to deal with facts closely aligned to the circumstances of the offending

which amount to mitigation and which may need to be resolved prior to sentence. The resolution of these matters does not amount to a *Newton* hearing properly so defined and in so far as facts fall to be established the defence will have to discharge the civil burden in order to do so. The scope of the evidence required to resolve issues that are purely matters of mitigation is for the court to determine.

(d) Cases involving serious fraud – a plea of guilty upon a basis of plea agreed by the prosecution and defence accompanied by joint submissions as to sentence

B.15 This section applies when the prosecution and the defendant(s) to a matter before the Crown Court involving allegations of serious or complex fraud have agreed a basis of plea and seek to make submissions to the court regarding sentence.

B.16 Guidance for prosecutors regarding the operation of this procedure is set out in the 'Attorney General's Guidelines on Plea Discussions in Cases of Serious or Complex Fraud', which came into force on 5 May 2009 and is referred to in this direction as the "Attorney General's Plea Discussion Guidelines".

B.17 In this part –

(a) "a plea agreement" means a written basis of plea agreed between the prosecution and defendant(s) in accordance with the principles set out in *R v Underwood*, supported by admissible documentary evidence or admissions under section 10 of the Criminal Justice Act 1967;

(b) "a sentencing submission" means sentencing submissions made jointly by the prosecution and defence as to the appropriate sentencing authorities and applicable sentencing range in the relevant sentencing guideline relating to the plea agreement;

(c) "serious or complex fraud" includes, but is not limited to, allegations of fraud where two or more of the following are present:

(i) the amount obtained or intended to be obtained exceeded £500,000;

(ii) there is a significant international dimension;

(iii) the case requires specialised knowledge of financial, commercial, fiscal or regulatory matters such as the operation of markets, banking systems, trusts or tax regimes;

(iv) the case involves allegations of fraudulent activity against numerous victims;

(v) the case involves an allegation of substantial and significant fraud on a public body;

(vi) the case is likely to be of widespread public concern;

(vii) the alleged misconduct endangered the economic well-being of the United Kingdom, for example by undermining confidence in financial markets.

Procedure

B.18 The procedure regarding agreed bases of plea outlined above, applies with equal rigour to the acceptance of pleas under this procedure. However, because under this procedure the parties will have been discussing the plea agreement and the charges from a much earlier stage, it is vital that the judge is fully informed of all relevant background to the discussions, charges and the eventual basis of plea.

B.19 Where the defendant has not yet appeared before the Crown Court, the prosecutor must send full details of the plea agreement and sentencing submission(s) to the court, at least 7 days in advance of the defendant's first appearance. Where the defendant has already appeared before the Crown Court, the prosecutor must notify the court as soon as is reasonably practicable that a plea agreement and sentencing submissions under the Attorney General's Plea Discussion Guidelines are to be submitted. The court should set a date for the matter to be heard, and the prosecutor must send full details of the plea agreement and sentencing submission(s) to the court as soon as practicable, or in accordance with the directions of the court.

B.20 The provision to the judge of full details of the plea agreement requires sufficient information to be provided to allow the judge to understand the facts of the case and the history of the plea discussions, to assess whether the plea agreement is fair and in the interests of justice, and to decide the appropriate sentence. This will include, but is not limited to:

(i) the plea agreement;

(ii) the sentencing submission(s);

(iii) all of the material provided by the prosecution to the defendant in the course of the plea discussions;

(iv) relevant material provided by the defendant, for example documents relating to personal mitigation; and

(v) the minutes of any meetings between the parties and any correspondence generated in the plea discussions.

The parties should be prepared to provide additional material at the request of the court.

B.21 The court should at all times have regard to the length of time that has elapsed since the date of the occurrence of the events giving rise to the plea discussions, the time taken to interview the defendant, the date of charge and the prospective trial date (if the matter were to proceed to trial) so as to ensure that its

consideration of the plea agreement and sentencing submissions does not cause any unnecessary further delay.

Status of plea agreement and joint sentencing submissions

B.22 Where a plea agreement and joint sentencing submissions are submitted, it remains entirely a matter for the court to decide how to deal with the case. The judge retains the absolute discretion to refuse to accept the plea agreement and to sentence otherwise than in accordance with the sentencing submissions made under the Attorney General's Plea Discussion Guidelines.

B.23 Sentencing submissions should draw the court's attention to any applicable range in any relevant guideline, and to any ancillary orders that may be applicable. Sentencing submissions should not include a specific sentence or agreed range other than the ranges set out in sentencing guidelines or authorities.

B.24 Prior to pleading guilty in accordance with the plea agreement, the defendant(s) may apply to the court for an indication of the likely maximum sentence under the procedure set out below (a '*Goodyear* indication').

B.25 In the event that the judge indicates a sentence or passes a sentence which is not within the submissions made on sentencing, the plea agreement remains binding.

B.26 If the defendant does not plead guilty in accordance with the plea agreement, or if a defendant who has pleaded guilty in accordance with a plea agreement, successfully applies to withdraw his plea under CrimPR 25.5, the signed plea agreement may be treated as confession evidence, and may be used against the defendant at a later stage in these or any other proceedings. Any credit for a timely guilty plea may be lost. The court may exercise its discretion under section 78 of the Police and Criminal Evidence Act 1984 to exclude any such evidence if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

B.27 Where a defendant has failed to plead guilty in accordance with a plea agreement, the case is unlikely to be ready for trial immediately. The prosecution may have been commenced earlier than it otherwise would have been, in reliance upon the defendant's agreement to plead guilty. This is likely to be a relevant consideration for the court in deciding whether or not to grant an application to adjourn or stay the proceedings to allow the matter to be prepared for trial in accordance with the protocol on the 'Control and Management of Heavy Fraud and other Complex Criminal Cases', or as required.

C Indications of sentence: R v Goodyear

CPD VII Sentencing C: INDICATIONS OF SENTENCE: *R v Goodyear*

C.1 Prior to pleading guilty, it is open to a defendant in the Crown Court to request from the judge an indication of the maximum sentence that would be imposed if a guilty plea were to be tendered at that stage in the proceedings, in accordance with the guidance in *R v Goodyear* [2005] EWCA Crim 888, [2005] 1 W.L.R. 2532, [2005] 2 Cr. App. R. 20. The defence should notify the court and the prosecution of the intention to seek an indication in advance of any hearing.

C.2 Attention is drawn to the guidance set out in paragraphs 53 and following of *R v Goodyear*. The objective of the *Goodyear* guidelines is to safeguard against the creation or appearance of judicial pressure on a defendant. Any advance indication given should be the maximum sentence if a guilty plea were to be tendered at that stage of the proceedings only; the judge should not indicate the maximum possible sentence following conviction by a jury after trial. The judge should only give a *Goodyear* indication if one is requested by the defendant, although the judge can, in an appropriate case, remind the defence advocate of the defendant's entitlement to seek an advance indication of sentence.

C.3 Whether to give a *Goodyear* indication, and whether to give reasons for a refusal, is a matter for the discretion of the judge, to be exercised in accordance with the principles outlined by the Court of Appeal in that case. Such indications should normally not be given if there is a dispute as to the basis of plea unless the judge concludes that he or she can properly deal with the case without the need for a *Newton* hearing. If there is a basis of plea agreed by the prosecution and defence, it must be reduced into writing and a copy provided to the judge. As always, any basis of plea will be subject to the approval of the court. In cases where a dispute arises, the procedure in *R v Underwood* should be followed prior to the court considering a sentence indication further, as set out above. The judge should not become involved in negotiations about the acceptance of pleas or any agreed basis of plea, nor should a request be made for an indication of the different sentences that might be imposed if various different pleas were to be offered.

C.4 There should be no prosecution opening nor should the judge hear mitigation. However, during the sentence indication process the prosecution advocate is expected to assist the court by ensuring that the court has received all of the prosecution evidence, any statement from the victim about the impact of the offence, and any relevant previous convictions. Further, where appropriate, the prosecution should provide references to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court requires.

C.5 Attention is drawn to paragraph 70(d) of *Goodyear* which emphasises that the prosecution "should not say anything which may create the impression that the sentence indication has the support or approval of the Crown." This prohibition against the Crown indicating its approval of a particular sentence applies in all circumstances when a defendant is being sentenced, including when joint sentencing submissions are made.

C.6 An indication, once given, is, save in exceptional circumstances (such as arose in *R v Newman* [2010] EWCA Crim 1566, [2011] 1 Cr. App. R. (S.) 68), binding on the judge who gave it, and any other judge, subject to overriding statutory obligations such as those following a finding of "dangerousness". In circumstances where a

judge proposes to depart from a *Goodyear* indication this must only be done in a way that does not give rise to unfairness (see *Newman*). However, if the defendant does not plead guilty, the indication will not thereafter bind the court.

C.7 If the offence is a specified offence such that the defendant might be liable to an assessment of 'dangerousness' in accordance with the Criminal Justice Act 2003 it is unlikely that the necessary material for such an assessment will be available. The court can still proceed to give an indication of sentence, but should state clearly the limitations of the indication that can be given.

C.8 A *Goodyear* indication should be given in open court in the presence of the defendant but any reference to the hearing is not admissible in any subsequent trial; and reporting restrictions should normally be imposed.

D Facts to be stated on pleas of guilty

CPD VII Sentencing D: FACTS TO BE STATED ON PLEAS OF GUILTY

D.1 To enable the press and the public to know the circumstances of an offence of which an accused has been convicted and for which he is to be sentenced, in relation to each offence to which an accused has pleaded guilty the prosecution shall state those facts in open court, before sentence is imposed.

E Concurrent and consecutive sentences

CPD VII Sentencing E: CONCURRENT AND CONSECUTIVE SENTENCES

E.1 Where a court passes on a defendant more than one term of imprisonment, the court should state in the presence of the defendant whether the terms are to be concurrent or consecutive. Should this not be done, the court clerk should ask the court, before the defendant leaves court, to do so.

E.2 If a defendant is, at the time of sentence, already serving two or more consecutive terms of imprisonment and the court intends to increase the total period of imprisonment, it should use the expression 'consecutive to the total period of imprisonment to which you are already subject' rather than 'at the expiration of the term of imprisonment you are now serving', as the defendant may not then be serving the last of the terms to which he is already subject.

E.3 The Sentencing Council has issued a definitive guideline on Totality which should be consulted. Under section 125(1) of the Coroners and Justice Act 2009, for offences committed after 6 April 2010, the guideline must be followed unless it would be contrary to the interests of justice to do so.

F Victim Personal Statements

CPD VII Sentencing F: VICTIM PERSONAL STATEMENTS

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.

G Families bereaved by homicide and other criminal conduct

CPD VII Sentencing G: FAMILIES BEREAVED BY HOMICIDE AND OTHER CRIMINAL CONDUCT

G.1 In cases in which the victim has died as a result of the relevant criminal conduct, the victim's family is not a party to the proceedings, but does have an interest in the case. Bereaved families have particular entitlements under the Code of Practice for Victims of Crime. All parties should have regard to the needs of the victim's family and ensure that the trial process does not expose bereaved families to avoidable intimidation, humiliation or distress.

G.2 In so far as it is compatible with family members' roles as witnesses, the court should consider the following measures:

a) Practical arrangements being discussed with the family and made in good time before the trial, such as seating for family members in the courtroom; if appropriate, in an alternative area, away from the public gallery.

b) Warning being given to families if the evidence on a certain day is expected to be particularly distressing.

c) Ensuring that appropriate use is made of the scheme for Victim Personal Statements, in accordance with the paragraphs above.

G.3 The sentencer should consider providing a written copy of the sentencing remarks to the family after sentence has been passed. Sentencers should tend in favour of providing such a copy, unless there is good reason not to do so, and the copy should be provided as soon as is reasonably practicable after the sentencing hearing.

H Community Impact Statements

CPD VII Sentencing H: COMMUNITY IMPACT STATEMENTS

H.1 A community impact statement may be prepared by the police to make the court aware of particular crime trends in the local area and the impact of these on the local community.

H.2 Such statements 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 is not represented.

H.3 The community impact statement 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.

H.4 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 local community. 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.

H.5 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 local community.

H.6 It will not be appropriate for a Community Impact Statement to be made after disposal of the case but before an appeal.

I Impact Statements for Businesses

CPD VII Sentencing I: IMPACT STATEMENTS FOR BUSINESSES

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 a victim, or one of those others affected by a crime, is a business, enterprise or other body (including a charity or public body, for example a school or hospital), 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 or other body. 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 or other body 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 or other body 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 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 or other body 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 such a business or body, the nominated representative, must be authorised to do so on its behalf, either by nature of their position, such as a director or owner or a senior official, or by having been suitably authorised, such as by the owner or Board of Directors or governing body. The nominated representative must also be in a position to give admissible evidence about the impact of the crime on the business or body. 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 or other body 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 or body 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 and others affected, including any business or other corporate 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 or other body.

J Binding over orders and conditional discharges

CPD VII Sentencing J: BINDING OVER ORDERS AND CONDITIONAL DISCHARGES

J.1 This direction takes into account the judgments of the European Court of Human Rights in *Steel v United Kingdom* (1999) 28 EHRR 603, [1998] Crim. L.R. 893 and in *Hashman and Harrup v United Kingdom* (2000) 30 EHRR 241, [2000] Crim. L.R. 185. Its purpose is to give practical guidance, in the light of those two judgments, on the practice of imposing binding over orders. The direction applies to orders made under the court's common law powers, under the Justices of the Peace Act 1361, under section 1(7) of the Justices of the Peace Act 1968 and under section 115 of the Magistrates' Courts Act 1980. This direction also gives guidance concerning the court's power to bind over parents or guardians under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 and the Crown Court's power to bind over to come up for judgment. The court's power to impose a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 is also covered by this direction.

Binding over to keep the peace

J.2 Before imposing a binding over order, the court must be satisfied so that it is sure that a breach of the peace involving violence, or an imminent threat of violence, has occurred or that there is a real risk of violence in the future. Such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct.

J.3 In light of the judgment in *Hashman*, courts should no longer bind an individual over "to be of good behaviour". Rather than binding an individual over to "keep the peace" in general terms, the court should identify the specific conduct or activity from which the individual must refrain.

Written order

J.4 When making an order binding an individual over to refrain from specified types of conduct or activities, the details of that conduct or those activities should be

specified by the court in a written order, served on all relevant parties. The court should state its reasons for the making of the order, its length and the amount of the recognisance. The length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months.

Evidence

J.5 Sections 51 to 57 of the Magistrates' Courts Act 1980 set out the jurisdiction of the magistrates' court to hear an application made on complaint and the procedure which is to be followed. This includes a requirement under section 53 to hear evidence and the parties, before making any order. This practice should be applied to all cases in the magistrates' court and the Crown Court where the court is considering imposing a binding over order. The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.

J.6 Where there is an admission which is sufficient to found the making of a binding over order and / or the individual consents to the making of the order, the court should nevertheless hear sufficient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

J.7 Where there is an allegation of breach of a binding over order and this is contested, the court should hear representations and evidence, including oral evidence, from the parties before making a finding. If unrepresented and no opportunity has been given previously the court should give a reasonable period for the person said to have breached the binding over order to find representation.

Burden and standard of proof

J.8 The court should be satisfied so that it is sure of the matters complained of before a binding over order may be imposed. Where the procedure has been commenced on complaint, the burden of proof rests on the complainant. In all other circumstances, the burden of proof rests upon the prosecution.

J.9 Where there is an allegation of breach of a binding over order, the court should be satisfied on the balance of probabilities that the defendant is in breach before making any order for forfeiture of a recognisance. The burden of proof shall rest on the prosecution.

Recognisance

J.10 The court must be satisfied on the merits of the case that an order for binding over is appropriate and should announce that decision before considering the

amount of the recognisance. If unrepresented, the individual who is made subject to the binding over order should be told he has a right of appeal from the decision.

J.11 When fixing the amount of recognisance, courts should have regard to the individual's financial resources and should hear representations from the individual or his legal representatives regarding finances.

J.12 A recognisance is made in the form of a bond giving rise to a civil debt on breach of the order.

Refusal to enter into a recognizance

J.13 If there is any possibility that an individual will refuse to enter a recognizance, the court should consider whether there are any appropriate alternatives to a binding over order (for example, continuing with a prosecution). Where there are no appropriate alternatives and the individual continues to refuse to enter into the recognisance, the court may commit the individual to custody. In the magistrates' court, the power to do so will derive from section 1(7) of the Justices of the Peace Act 1968 or, more rarely, from section 115(3) of the Magistrates' Courts Act 1980, and the court should state which power it is acting under; in the Crown Court, this is a common law power.

J.14 Before the court exercises a power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings if the individual so wishes. Public funding should generally be granted to cover representation. In the Crown Court this rests with the Judge who may grant a Representation Order.

J.15 In the event that the individual does not take the opportunity to seek legal advice, the court shall give the individual a final opportunity to comply with the request and shall explain the consequences of a failure to do so.

Antecedents

J.16 Courts are reminded of the provisions of section 7(5) of the Rehabilitation of Offenders Act 1974 which excludes from a person's antecedents any order of the court "with respect to any person otherwise than on a conviction".

Binding over to come up for judgment

J.17 If the Crown Court is considering binding over an individual to come up for judgment, the court should specify any conditions with which the individual is to comply in the meantime and not specify that the individual is to be of good behaviour.

J.18 The Crown Court should, if the individual is unrepresented, explain the

consequences of a breach of the binding over order in these circumstances.

Binding over of parent or guardian

J.19 Where a court is considering binding over a parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 to enter into a recognisance to take proper care of and exercise proper control over a child or young person, the court should specify the actions which the parent or guardian is to take.

Security for good behaviour

J.20 Where a court is imposing a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000, it has the power, under section 12(6) to make an order that a person who consents to do so give security for the good behaviour of the offender. When making such an order, the court should specify the type of conduct from which the offender is to refrain.

K Committal for sentence

CPD VII Sentencing K: COMMITTAL FOR SENTENCE

K.1 CrimPR 28.10 applies when a case is committed to the Crown Court for sentence and specifies the information and documentation that must be provided by the magistrates' court. On a committal for sentence any reasons given by the magistrates for their decision should be included with the documents. All of these documents should be made available to the judge in the Crown Court if the judge requires them, in order to decide before the hearing questions of listing or representation or the like. They will also be available to the court during the hearing if it becomes necessary or desirable for the court to see what happened in the lower court.

L Imposition of life sentences

CPD VII Sentencing L: IMPOSITION OF LIFE SENTENCES

L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.

L.2 Thus the life sentence falls into two parts:

(a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and

(b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

M Mandatory life sentences

CPD VII Sentencing M: MANDATORY LIFE SENTENCES

M.1 The purpose of this section is to give practical guidance as to the procedure for passing a mandatory life sentence under section 269 and schedule 21 of the Criminal Justice Act 2003 ('the Act'). This direction also gives guidance as to the transitional arrangements under section 276 and schedule 22 of the Act. It clarifies the correct approach to looking at the practice of the Secretary of State prior to December 2002 for the purposes of schedule 22 of the Act, in the light of the judgment in *R. v Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762,[2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67.

M.2 Section 269 came into force on 18 December 2003. Under section 269, all courts passing a mandatory life sentence must either announce in open court the minimum term the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (as amended by section 275 of the Act), or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a 'whole life order').

M.3 In setting the minimum term, the court must set the term it considers appropriate taking into account the seriousness of the offence. In considering the seriousness of the offence, the court must have regard to the general principles set out in Schedule 21 of the Act as amended and any guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21. Although it is necessary to have regard to such guidance, it is always permissible not to apply the guidance if a judge considers there are reasons for not following it. It is always necessary to have regard to the need to do justice in the particular case. However, if a court departs from any of the

starting points given in Schedule 21, the court is under a duty to state its reasons for doing so (section 270(2)(b) of the Act).

M.4 Schedule 21 states that the first step is to choose one of five starting points: "whole life", 30 years, 25 years, 15 years or 12 years. Where the 15 year starting point has been chosen, judges should have in mind that this starting point encompasses a very broad range of murders. At paragraph 35 of *Sullivan*, the court found it should not be assumed that Parliament intended to raise all minimum terms that would previously have had a lower starting point, to 15 years.

M.5 Where the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the appropriate starting point is a 'whole life order'. (paragraph 4(1) of Schedule 21). The effect of such an order is that the early release provisions in section 28 of the Crime (Sentences) Act 1997 will not apply. Such an order should only be specified where the court considers that the seriousness of the offence (or the combination of the offence and one or more other offences associated with it) is exceptionally high. Paragraph 4 (2) sets out examples of cases where it would normally be appropriate to take the 'whole life order' as the appropriate starting point.

M.6 Where the offender is aged 18 to 20 and commits a murder that is so serious that it would require a whole life order if committed by an offender aged 21 or over, the appropriate starting point will be 30 years. (Paragraph 5(2)(h) of Schedule 21).

M.7 Where a case is not so serious as to require a 'whole life order' but where the seriousness of the offence is particularly high and the offender was aged 18 or over when he committed the offence, the appropriate starting point is 30 years (paragraph 5(1) of Schedule 21). Paragraph 5 (2) sets out examples of cases where a 30 year starting point would normally be appropriate (if they do not require a 'whole life order').

M.8 Where the offender was aged 18 or over when he committed the offence, took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used it in committing the murder, the offence is normally to be regarded as sufficiently serious for an appropriate starting point of 25 years (paragraph 5A of Schedule 21).

M.9 Where the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4 (1), 5 (1) or 5A(1) of Schedule 21, the appropriate starting point is 15 years (see paragraph 6).

M.10 18 to 20 year olds are only the subject of the 30-year, 25-year and 15-year starting points.

M.11 The appropriate starting point when setting a sentence of detention during Her Majesty's pleasure for offenders aged under 18 when they committed the offence is always 12 years (paragraph 7 of Schedule 21).

M.12 The second step after choosing a starting point is to take account of any aggravating or mitigating factors which would justify a departure from the starting point. Additional aggravating factors (other than those specified in

paragraphs 4 (2), 5(2) and 5A) are listed at paragraph 10 of Schedule 21. Examples of mitigating factors are listed at paragraph 11 of Schedule 21. Taking into account the aggravating and mitigating features, the court may add to or subtract from the starting point to arrive at the appropriate punitive period.

M.13 The third step is that the court should consider the effect of section 143(2) of the Act in relation to previous convictions; section 143(3) of the Act where the offence was committed whilst the offender was on bail; and section 144 of the Act where the offender has pleaded guilty (paragraph 12 of Schedule 21). The court should then take into account what credit the offender would have received for a remand in custody under section 240 or 240ZA of the Act and/or for a remand on bail subject to a qualifying curfew condition under section 240A, but for the fact that the mandatory sentence is one of life imprisonment. Where the offender has been thus remanded in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner is considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should make any appropriate subtraction from the punitive period it would otherwise impose, in order to reach the minimum term.

M.14 Following these calculations, the court should have arrived at the appropriate minimum term to be announced in open court. As paragraph 9 of Schedule 21 makes clear, the judge retains ultimate discretion and the court may arrive at any minimum term from any starting point. The minimum term is subject to appeal by the offender under section 271 of the Act and subject to review on a reference by the Attorney-General under section 272 of the Act.

N Transitional arrangements for sentences where the offence was committed before 18 December 2003

CPD VII Sentencing N: TRANSITIONAL ARRANGEMENTS FOR SENTENCES WHERE THE OFFENCE WAS COMMITTED BEFORE 18 DECEMBER 2003

N.1 Where the court is passing a sentence of mandatory life imprisonment for an offence committed before 18 December 2003, the court should take a fourth step in determining the minimum term in accordance with section 276 and Schedule 22 of the Act.

N.2 The purpose of those provisions is to ensure that the sentence does not breach the principle of non-retroactivity, by ensuring that a lower minimum term would not have been imposed for the offence when it was committed. Before setting the minimum term, the court must check whether the proposed term is greater than that which the Secretary of State would probably have notified under the practice followed by the Secretary of State before December 2002.

N.3 The decision in *Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67 gives detailed guidance as to the correct approach to this practice and judges passing mandatory life

sentences where the murder was committed prior to 18 December 2003 are well advised to read that judgment before proceeding.

N.4 The practical result of that judgment is that in sentences where the murder was committed before 31 May 2002, the best guide to what would have been the practice of the Secretary of State is the letter sent to judges by Lord Bingham CJ on 10th February 1997, the relevant parts of which are set out below.

N.5 The practice of Lord Bingham, as set out in his letter of 10 February 1997, was to take 14 years as the period actually to be served for the 'average', 'normal' or 'unexceptional' murder. Examples of factors he outlined as capable, in appropriate cases, of mitigating the normal penalty were:

(1) Youth;

(2) Age (where relevant to physical capacity on release or the likelihood of the defendant dying in prison);

(3) [Intellectual disability or mental disorder];

(4) Provocation (in a non-technical sense), or an excessive response to a personal threat;

(5) The absence of an intention to kill;

(6) Spontaneity and lack of premeditation (beyond that necessary to constitute the offence: e.g. a sudden response to family pressure or to prolonged and eventually insupportable stress);

(7) Mercy killing;

(8) A plea of guilty, or hard evidence of remorse or contrition.

N.6 Lord Bingham then listed the following factors as likely to call for a sentence more severe than the norm:

(1) Evidence of planned, professional, revenge or contract killing;

(2) The killing of a child or a very old or otherwise vulnerable victim;

(3) Evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;

(4) Killing for gain (in the course of burglary, robbery, blackmail, insurance fraud, etc.);

(5) Multiple killings;

(6) The killing of a witness, or potential witness, to defeat the ends of justice;

(7) The killing of those doing their public duty (policemen, prison officers, postmasters, firemen, judges, etc.);

(8) Terrorist or politically motivated killings;

(9) The use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;

(10) A substantial record of serious violence;

(11) Macabre attempts to dismember or conceal the body.

N.7 Lord Bingham further stated that the fact that a defendant was under the influence of drink or drugs at the time of the killing is so common he would be inclined to treat it as neutral. But in the not unfamiliar case in which a couple, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, then he would tend to recommend a term somewhat below the norm.

N.8 Lord Bingham went on to say that given the intent necessary for proof of murder, the consequences of taking life and the understandable reaction of relatives to the deceased, a substantial term will almost always be called for, save perhaps in a truly venial case of mercy killing. While a recommendation of a punitive term longer than, say, 30 years will be very rare indeed, there should not be any upper limit. Some crimes will certainly call for terms very well in excess of the norm.

N.9 For the purposes of sentences where the murder was committed after 31 May 2002 and before 18 December 2003, the judge should apply the Practice Statement handed down on 31 May 2002 reproduced at paragraphs N.10 to N.20 below.

N.10 This Statement replaces the previous single normal tariff of 14 years by substituting a higher and a normal starting point of respectively 16 (comparable to 32 years) and 12 years (comparable to 24 years). These starting points have then to be increased or reduced because of aggravating or mitigating factors such as those referred to below. It is emphasised that they are no more than starting points.

The normal starting point of 12 years

N.11 Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph N.13. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

N.12 The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:-

(a) the case came close to the borderline between murder and manslaughter; or

(b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility

for the killing, although not affording a defence of diminished responsibility; or

(c) the offender was provoked (in a non-technical sense) such as by prolonged and eventually unsupportable stress; or

(d) the case involved an over-reaction in self-defence; or

(e) the offence was a mercy killing.

These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

N.13 The higher starting point will apply to cases where the offender's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:-

(a) the killing was 'professional' or a contract killing;

(b) the killing was politically motivated;

(c) the killing was done for gain (in the course of a burglary, robbery etc.);

(d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);

(e) the victim was providing a public service;

(f) the victim was a child or was otherwise vulnerable;

(g) the killing was racially aggravated;

(h) the victim was deliberately targeted because of his or her religion or sexual orientation;

(i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;

(j) extensive and/or multiple injuries were inflicted on the victim before death;

(k) the offender committed multiple murders.

Variation of the starting point

N.14 Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

N.15 Aggravating factors relating to the offence can include:

(a) the fact that the killing was planned;

(b) the use of a firearm;

(c) arming with a weapon in advance;

(d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;

(e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

N.16 Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

N.17 Mitigating factors relating to the offence will include:

(a) an intention to cause grievous bodily harm, rather than to kill;

(b) spontaneity and lack of pre-meditation.

N.18 Mitigating factors relating to the offender may include:

(a) the offender's age;

(b) clear evidence of remorse or contrition;

(c) a timely plea of guilty.

Very serious cases

N.19 A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

N.20 Among the categories of case referred to in paragraph N.13, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder, or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.

N.21 In following this guidance, judges should bear in mind the conclusion of the Court in *Sullivan* that the general effect of both these statements is the same. While Lord Bingham does not identify as many starting points, it is open to the judge to come to exactly the same decision irrespective of which was followed. Both pieces of guidance give the judge a considerable degree of discretion.

P Procedure for announcing the minimum term in open court

CPD VII Sentencing P: PROCEDURE FOR ANNOUNCING THE MINIMUM TERM IN OPEN COURT

P.1 Having gone through the three or four steps outlined above, the court is then under a duty, under section 270 of the Act, to state in open court, in ordinary language, its reasons for deciding on the minimum term or for passing a whole life order.

P.2 In order to comply with this duty, the court should state clearly the minimum term it has determined. In doing so, it should state which of the starting points it has chosen and its reasons for doing so. Where the court has departed from that starting point due to mitigating or aggravating features, it must state the reasons for that departure and any aggravating or mitigating features which have led to that departure. At that point, the court should also declare how much, if any, time is being deducted for time spent in custody and/or on bail subject to a qualifying curfew condition. The court must then explain that the minimum term is the minimum amount of time the prisoner will spend in prison, from the date of sentence, before the Parole Board can order early release. If it remains necessary for the protection of the public, the prisoner will continue to be detained after that date. The court should also state that where the prisoner has served the minimum term and the Parole Board has decided to direct release, the prisoner will remain on licence for the rest of his life and may be recalled to prison at any time.

P.3 Where the offender was 21 or over when he committed the offence and the court considers that the seriousness of the offence is so exceptionally high that a 'whole life order' is appropriate, the court should state clearly its reasons for reaching this conclusion. It should also explain that the early release provisions will not apply.

Q Financial information required for sentencing

CPD VII Sentencing Q: FINANCIAL, ETC. INFORMATION REQUIRED

FOR SENTENCING

Q.1 These directions supplement CrimPR 24.11 and 25.16, which set out the procedure to be followed where a defendant pleads guilty, or is convicted, and is to be sentenced. They are not concerned exclusively with corporate defendants, or with offences of an environmental, public health, health and safety or other regulatory character, but the guidance which they contain is likely to be of particular significance in such cases.

Q.2 The rules set out the prosecutor's responsibilities in all cases. Where the offence is of a character, or is against a prohibition, with which the sentencing court is unlikely to be familiar, those responsibilities are commensurately more onerous. The court is entitled to the greatest possible assistance in identifying information relevant to sentencing.

Q.3 In such a case, save where the circumstances are very straightforward, it is likely that justice will best be served by the submission of the required information in writing: see *R v Friskies Petcare (UK) Ltd* [2000] 2 Cr App R (S) 401. Though it is the prosecutor's responsibility to the court to prepare any such document, if the defendant pleads guilty, or indicates a guilty plea, then it is very highly desirable that such sentencing information should be agreed between the parties and jointly submitted. If agreement cannot be reached in all particulars, then the nature and extent of the disagreement should be indicated. If the court concludes that what is in issue is material to sentence, then it will give directions for resolution of the dispute, whether by hearing oral evidence or by other means. In every case, when passing sentence the sentencing court must make clear on what basis sentence is passed: in fairness to the defendant, and for the information of any other person, or court, who needs or wishes to understand the reasons for sentence.

Q.4 If so directed by or on behalf of the court, a defendant must supply accurate information about financial circumstances. In fixing the amount of any fine the court must take into account, amongst other considerations, the financial circumstances of the offender (whether an individual or other person) as they are known or as they appear to be. Before fixing the amount of fine when the defendant is an individual, the court must inquire into his financial circumstances. Where the defendant is an individual the court may make a financial circumstances order in respect of him. This means an order in which the court requires an individual to provide a statement as to his financial means, within a specified time. It is an offence, punishable with imprisonment, to fail to comply with such an order or for knowingly/recklessly furnishing a false statement or knowingly failing to disclose a material fact. The provisions of section 20A Criminal Justice Act 1991 apply to any person (thereby including a corporate organisation) and place the offender under a statutory duty to provide the court with a statement as to his financial means in response to an official request. There are offences for non-compliance, false statements or non-disclosure. It is for the court to decide how much information is required, having regard to relevant sentencing guidelines or guideline cases. However, by reference to those same guidelines and cases the parties should anticipate what the court will require, and prepare accordingly. In complex cases, and in cases involving a corporate defendant, the information required will be more extensive than in others. In the case of a corporate defendant, that information usually will include details of the defendant's corporate structure; annual profit and loss accounts, or extracts; annual balance sheets, or extracts; details of shareholders' receipts; and details of the remuneration of directors or other officers.

Q.5 In *R v F Howe and Son (Engineers) Ltd* [1999] 2 Cr App R (S) 37 the Court of Appeal observed:

> "If a defendant company wishes to make any submission to the court about its ability to pay a fine it should supply copies of its accounts and any other financial information on which it intends to rely in good time before the hearing both to the court and to the prosecution. This will give the prosecution the opportunity to assist the court should the court wish it. Usually accounts need to be considered with some care

to avoid reaching a superficial and perhaps erroneous conclusion. Where accounts or other financial information are deliberately not supplied the court will be entitled to conclude that the company is in a position to pay any financial penalty it is minded to impose. Where the relevant information is provided late it may be desirable for sentence to be adjourned, if necessary at the defendant's expense, so as to avoid the risk of the court taking what it is told at face value and imposing an inadequate penalty."

Q.6 In the case of an individual, the court is likewise entitled to conclude that the defendant is able to pay any fine imposed unless the defendant has supplied financial information to the contrary. It is the defendant's responsibility to disclose to the court such information relevant to his or her financial position as will enable it to assess what he or she reasonably can afford to pay. If necessary, the court may compel the disclosure of an individual defendant's financial circumstances. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.

R Medical Reports for sentencing purposes

CPD VII Sentencing R: MEDICAL REPORTS FOR SENTENCING PURPOSES

General observations

R.1 CrimPR 24.11 and 25.16 concern standard sentencing procedures in magistrates' courts and in the Crown Court respectively. CrimPR 28.8 deals with the obtaining of medical reports for sentencing purposes.

R.2 Rule 28.8 governs the procedure to be followed where a report is commissioned at the instigation of the court. It is not a substitute for the prompt commissioning of a report or reports by a defendant or defendant's representatives where expert medical opinion is material to the defence case. In particular, the defendant's representatives may wish to obtain a medical report or reports wholly independently of the court. Nothing in these directions, therefore, should be read as discouraging the commissioning of a medical report before the case comes before the court, where such a report is expected to be material and where it is possible promptly to commission it. However, where such a report has been commissioned then if that report has not been received in time for sentencing and if the court agrees that it seems likely to be material, then the court should set a timetable for the reception of that report and should give directions for progress to be reviewed at intervals, adopting the timetable set out in these directions with such adaptations as are needed.

R.3 In assessing the likely materiality of an expert medical report for sentencing purposes the court will be assisted by the parties' representations; by the views expressed in any pre-sentence report that may have been prepared; and by the views of practitioners in local criminal justice mental health services, whose assistance is available to the court under local liaison arrangements.

R.4 Where the court requires the assistance of such a report then it is essential that there should be (i) absolute clarity about who is expected to do what, by when, and at whose expense; and (ii) judicial directions for progress with that report to be monitored and reviewed at prescribed intervals, following a timetable set by the court which culminates in the consideration of the report at a hearing. This is especially important where the report in question is a psychiatric assessment of the defendant for the preparation of which specific expertise may be required which is not readily available and because in some circumstances a second such assessment, by another medical practitioner, may be required.

Timetable for the commissioning, preparation and consideration of a report or reports

R.5 CrimPR 28.8 requires the court to set a timetable appropriate to the case for the preparation and reception of a report. In doing so the court will take account of such representations and other information that it receives, including information about the anticipated availability and workload of practitioners with the appropriate expertise. However, the timetable ought not be a protracted one. It is essential to keep in mind the importance of maintaining progress: in recognition of the defendant's rights and with respect for the interests of victims and witnesses, as required by CrimPR Part 1 (the overriding objective). In a magistrates' court account must be taken, too, of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, which limits the duration of each remand pending the preparation of a report to 3 weeks, where the defendant is to be in custody, and to 4 weeks if the defendant is to be on bail.

R.6 Subject, therefore, to contrary judicial direction the timetable set by the court should require:

(a) the convening of a hearing to consider the report no more than 6 – 8 weeks after the court makes its request;

(b) the prompt identification of an appropriate medical practitioner or practitioners, if not already identified by the court, and the despatch of a commission or commissions accordingly, within 2 business days of the court's decision to request a report;

(c) acknowledgement of a commission by its recipient, and acceptance or rejection of that commission, within 5 business days of its receipt;

(d) enquiries by court staff to confirm that the commission has been received, and to ascertain the action being taken in response, in the event that no acknowledgement is received within 10 business days of its despatch;

(e) delivery of the report within 5 weeks of the despatch of the commission;

(f) enquiries into progress by court staff in the event that no report is received within 5 weeks of the despatch of the commission.

R.7 The hearing that is convened for the court to consider the report, at 6 – 8 weeks after the court requests that report, should not be adjourned before it takes place

save in exceptional circumstances and then only by explicit judicial direction the reasons for which must be recorded. If by the time of that hearing the report is available, as usually should be the case, then at that hearing the court can be expected to determine the issue in respect of which the report was commissioned and pass sentence. If by that time, exceptionally, the report is not available then the court should take the opportunity provided by that hearing to enquire into the reasons, give such directions as are appropriate, and if necessary adjourn the hearing to a fixed date for further consideration then. Where it is known in advance of that hearing that the report will not be available in time, the hearing may be conducted by live link or telephone: subject, in the defendant's case, to the same considerations as are identified at paragraph I.3N.6 of these Practice Directions. However, it rarely will be appropriate to dispense altogether with that hearing, or to make enquiries and give further directions without any hearing at all, in view of the arrangements for monitoring and review that the court already will have directed and which, by definition therefore, thus far will have failed to secure the report's timely delivery.

R.8 Where a requirement of the timetable set by the court is not met, or where on enquiry by court staff it appears that the timetable is unlikely to be met, and in any instance in which a medical practitioner who accepts a commission asks for more time, then court staff should not themselves adjust the timetable or accede to such a request but instead should seek directions from an appropriate judicial authority. Subject to local judicial direction, that will be, in the Crown Court, the judge assigned to the case or the resident judge and, in a magistrates' court, a District Judge (Magistrates' Courts) or justice of the peace assigned to the case, or the Justices' Clerk, an assistant clerk or other senior legal adviser. Even if the timetable is adjusted in consequence:

(a) the hearing convened to consider the report (that is, the hearing set for no more than 6 – 8 weeks after the court made its request) rarely should be adjourned before it takes place: see paragraph R.13 above;

(b) directions should be given for court staff henceforth to make regular enquiries into progress, at intervals of not more than 2 weeks, and to report the outcome to an appropriate judicial authority who will decide what further directions, if any, to give.

R.9 Any adjournment of a hearing convened to consider the report should be to a specific date: the hearing should not be adjourned generally, or to a date to be set in due course. The adjournment of such a hearing should not be for more than a further 6 – 8 weeks save in the most exceptional circumstances; and no more than one adjournment of the hearing should be allowed without obtaining written or oral representations from the commissioned medical practitioner explaining the reasons for the delay.

Commissioning a report

R.10 Guidance entitled 'Good practice guidance: commissioning, administering and producing psychiatric reports for sentencing' prepared for and published by the Ministry of Justice and HM Courts and Tribunals Service in September 2010

contains material that will assist court staff and those who are asked to prepare such reports:

http://www.ohrn.nhs.uk/resource/policy/GoodPracticeGuidePsychReports.pdf

That guidance includes standard forms of letters of instruction and other documents.

R.11 CrimPR 28.8 requires the commissioner of a report to explain why the court seeks the report and to include relevant information about the circumstances. The HMCTS Guidance contains forms for judicial use in the instruction of court staff, and guidance to court staff on the preparation of letters of instruction, where a report is required for sentencing purposes. Where a report is requested in a case involving manslaughter by reason of diminished responsibility, the report writer should have regard to the Sentencing Council's guideline on Manslaughter by reason of Diminished Responsibility. This should assist the report writer in providing the most helpful assessment to enable the court to determine the level of diminution involved in the case.

R.12 The commission should invite a practitioner who is unable to accept it promptly to nominate a suitably qualified substitute, if possible, and to transfer the commission to that person, reporting the transfer when acknowledging the court officer's letter. It is entirely appropriate for the commission to draw the recipient's attention to CrimPR 1.2 (the duty of the participants in a criminal case) and to CrimPR 19.2(1)(b) (the obligation of an expert witness to comply with directions made by a court and at once to inform the court of any significant failure, by the expert or another, to take any step required by such a direction).

R.13 Where the relevant legislation requires a second psychiatric assessment by a second medical practitioner, and where no commission already has been addressed to a second such practitioner, the commission may invite the person to whom it is addressed to nominate a suitably qualified second person and to pass a copy of the commission to that person forthwith.

Funding arrangements

R.14 Where a medical report has been, or is to be, commissioned by a party then that party is responsible for arranging payment of the fees incurred, even though the report is intended for the court's use. That must be made clear in that party's commission.

R.15 Where a medical report is requested by the court and commissioned by a party or by court staff at the court's direction then the commission must include (i) confirmation that the fees will be paid by HMCTS, (ii) details of how, and to whom, to submit an invoice or claim for fees, and (iii) notice of the prescribed rates of fees and of any legislative or other criteria applicable to the calculation of the fees that may be paid.

Remand in custody

R.16 Where the defendant who is to be examined will be remanded in custody then notice that directions have been given for a medical report or reports to be prepared must be included in the information given to the defendant's custodian, to ensure that the preparation of the report or reports can be facilitated. This is especially important where bail is withheld on the ground that it would be otherwise impracticable to complete the required report, and in particular where that is the only ground for withholding bail.

S Variations of sentence

CPD VII Sentencing S: VARIATION OF SENTENCE

S.1 Under section 142 of the Magistrates' Courts Act 1980, in some circumstances a magistrates' court may vary or rescind a sentence or other order that it has imposed or made if that appears to be in the interests of justice. Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000 the Crown court may vary or rescind a sentence or order which it has imposed or made, within a period of 56 days beginning with the date of that sentence or order, or beginning with the date of another defendant's acquittal or sentencing in some circumstances (see CrimPR 28.4(1)(b)).

S.2 CrimPR 28.4(2) allows the court to exercise those powers at a hearing, in public or in private, or without a hearing. However, rule 28.4(4) confines the court's discretion to dispense with a hearing by requiring the defendant's presence, necessarily at a hearing, unless the variation is one proposed by the defendant, or the effect of the variation is such that the defendant is no more severely dealt with under the sentence as varied than before; or, if neither of those conditions us satisfied, were a hearing has been convened at which the defendant has had an opportunity to make representations, whether or not he or she in fact attends. Moreover, rule 28.4 requires service on the other party of any application to vary a sentence or order, in response to which that other party may wish to make such representations as general principles of law require to be heard. It follows that the circumstances in which a variation of sentence properly may be made without a hearing, consistently with the rule, will be confined to cases in which neither party objects to what is proposed and in which the consequences for the defendant of the variation will be neutral or benign.

S.3 In such a case usually there will be no other objection to the making of the variation without a hearing. Even in such a case, however, the court retains a discretion to convene a hearing, in the exercise of which discretion due regard must be had to the overriding objective and to the importance of dealing with criminal cases in public, in accordance with the principle of open justice. The application of that latter principle was described in *R v Cox* [2019] EWCA Crim 71; [2019] 4 WLR 88 at paragraphs 18 – 19 in these terms:

"As stated in cases such as *R v Pinkerton* [2017] 1 Cr App R(S) 47 at [8] (a case where there in face was a downward adjustment of a concurrent custodial sentence which did not impact on the overall sentence) such alterations should be done openly "so that justice may be seen to be done". Likewise, in *R v Warren* [2017] 2 Cr App R(S) 5, the general desirability of re-sentencing taking place in the presence of the defendant and in court was stressed.

Accordingly, whilst it is easy to understand the attractions of administrative convenience… and particularly perhaps where the sentencing judge is not a full-time judge based at a particular court centre, those administrative attractions should not be permitted routinely to prevail over the delivery of open justice."

In reaching its decision the court therefore will take into account each of the relevant factors listed in CrimPR 1.1, and will be astute to distinguish between, on the one hand, the completion of details or the correction of errors of a quasi-administrative character and, on the other hand, a variation of sentence in which the determination will be a matter of legitimate public interest.

S.4 In any event, the making of the decision and the reasons for that decision always must be announced at a public hearing, even if only briefly and even if the parties are absent on that occasion: CrimPR 28.4(2)(b). While the decision itself must be made, and the reasons for that decision formulated, by the sentencing court itself (section 142(1) of the 1980 Act; section 155(4) of the 2000 Act), the public announcement may be made by a differently constituted court if it would be impracticable for the sentencing court to sit in public for the purpose within a reasonable time.

VIII Confiscation [empty]

IX Appeal

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION IX

APPEAL

CrimPR Part 34 Appeal to the Crown Court

34A Appeals to the Crown Court- Information from the parties

CPD IX Appeal 34A: APPEALS TO THE CROWN COURT

34A.1 On an appeal against conviction CrimPR 34.3 requires the appellant and respondent to supply information needed for the effective case management of the appeal, but allows the Crown Court to relieve the appellant – not the respondent – of that obligation, in whole or part.

34A.2 The court is most likely to exercise that discretion in an appellant's favour where he or she is not represented and is unable, without assistance, to provide reliable such information. The notes to the standard form of appeal notice invite the appellant to answer the relevant questions in that form to the extent that he or she is able, explaining that while the appellant may not be able to answer all those questions nevertheless any answers that can be given will assist in making arrangements for the hearing of the appeal. Where an appellant uses the prescribed form of easy read appeal notice the court usually should assume that the appellant will not be able to supply case management information, and that

form contains no questions corresponding with those in the standard appeal notice. In such a case relevant information will be supplied by the respondent in the respondent's notice and may be gleaned from material obtained from magistrates' court records by Crown Court staff.

34B Appeals to the Crown Court- Information from the magistrates' court

CPD IX Appeal 34B: APPEAL TO THE CROWN COURT: INFORMATION FROM THE MAGISTRATES' COURT:

34B.1 CrimPR 34.4 applies when a defendant appeals to the Crown Court against conviction or sentence and specifies the information and documentation that must be made available by the magistrates' court.

34B.2 In all cases magistrates' court staff must ensure that Crown Court staff are notified of the appeal as soon as practicable: CrimPR 34.4(2)(b). In most cases Crown Court staff will be able to obtain the other information required by CrimPR 34.4(3) or (4) by direct access to the electronic records created by magistrates' court staff. However, if such access is not available then alternative arrangements must be made for the transfer of such information to Crown Court staff by electronic means. Paper copies of documents should be created and sent only as a last resort.

34B.3 On an appeal against conviction, the reasons given by the magistrates for their decision should not be included with the documents; the appeal hearing is not a review of the magistrates' court's decision but a re-hearing. There is no requirement for the Notice of Appeal form to be redacted in any way; the judge and magistrates presiding over the rehearing will base their decision on the evidence presented during the rehearing itself.

34B.4 On an appeal solely against sentence, the magistrates' court's reasons and factual finding leading to the finding of guilt should be included, but any reasons for the sentence imposed should be omitted as the Crown Court will be conducting a fresh sentencing exercise. Whilst reasons for the sentence imposed are not necessary for the rehearing, the Notice of Appeal form may include references to the sentence that is being appealed. There is no requirement to redact this before the form is given to the judge and magistrates hearing the appeal.

CrimPR Part 39 Appeal to the Court of Appeal about conviction or sentence

39A Appeals against conviction and sentence – the provision of notice to the prosecution

CPD IX Appeal 39A: APPEALS AGAINST CONVICTION AND SENTENCE – THE PROVISION OF NOTICE TO THE PROSECUTION

39A.1 When an appeal notice served under CrimPR 39.2 is received by the Registrar of Criminal Appeals, the Registrar will notify the relevant prosecution authority, giving the case name, reference number and the trial or sentencing court.

39A.2 If the court or the Registrar directs, or invites, the prosecution authority to serve a respondent's notice under CrimPR 39.6, prior to the consideration of leave, the Registrar will also at that time serve on the prosecution authority the appeal

notice containing the grounds of appeal and the transcripts, if available. If the prosecution authority is not directed or invited to serve a respondent's notice but wishes to do so, the authority should request the grounds of appeal and any existing transcript from the Criminal Appeal Office. Any respondent's notice received prior to the consideration of leave will be made available to the single judge.

39A.3 The Registrar of Criminal Appeals will notify the relevant prosecution authority in the event that:

(a) leave to appeal against conviction or sentence is granted by the single Judge; or

(b) the single Judge or the Registrar refers an application for leave to appeal against conviction or sentence to the Full Court for determination; or

(c) there is to be a renewed application for leave to appeal against sentence only.

If the prosecution authority has not yet been served with the appeal notice and transcript, the Registrar will serve these with the notification, and if leave is granted, the Registrar will also serve the authority with the comments of the single judge.

39A.4 The prosecution should notify the Registrar without delay if they wish to be represented at the hearing. The prosecution should note that the Registrar will not delay listing to await a response from the Prosecution as to whether they wish to attend. Prosecutors should note that occasionally, for example, where the single Judge fixes a hearing date at short notice, the case may be listed very quickly.

39A.5 If the prosecution wishes to be represented at any hearing, the notification should include details of Counsel instructed and a time estimate. An application by the prosecution to remove a case from the list for Counsel's convenience, or to allow further preparation time, will rarely be granted.

39A.6 There may be occasions when the Court of Appeal Criminal Division will grant leave to appeal to an unrepresented applicant and proceed forthwith with the appeal in the absence of the appellant and Counsel. The prosecution should not attend any hearing at which the appellant is unrepresented. *Nasteska v. The former Yugoslav Republic of Macedonia (Application No.23152/05)* As a Court of Review, the Court of Appeal Criminal Division would expect the prosecution to have raised any specific matters of relevance with the sentencing Judge in the first instance.

39A.7 Where there is a renewed application for leave to appeal against a sentence imposed for an offence involving a fatality, the Crown Prosecution Service has indicated that it wishes to be represented at all sentence appeals in order to ensure that they are in a position, if appropriate, to make representations as to the impact of the offence upon the victim and their family. In those circumstances, if the court is minded to grant the application for leave to appeal the court should consider adjourning the hearing of the appeal to allow prosecution counsel to attend and for the victim's family to be notified and attend if they so wish.

39B Listing of appeals against conviction and sentence in the Court of Appeal Criminal Division (CACD)

CPD IX Appeal 39B: LISTING OF APPEALS AGAINST CONVICTION AND SENTENCE IN THE COURT OF APPEAL CRIMINAL DIVISION (CACD)

39B.1 Arrangements for the fixing of dates for the hearing of appeals will be made by the Criminal Appeal Office Listing Officer, under the superintendence of the Registrar of Criminal Appeals who may give such directions as he deems necessary.

39B.2 Where possible, regard will be had to an advocate's existing commitments. However, in relation to the listing of appeals, the Court of Appeal takes precedence over all lower courts, including the Crown Court. Wherever practicable, a lower court will have regard to this principle when making arrangements to release an advocate to appear in the Court of Appeal. In case of difficulty the lower court should communicate with the Registrar. In general an advocate's commitment in a lower court will not be regarded as a good reason for failing to accept a date proposed for a hearing in the Court of Appeal.

39B.3 Similarly when the Registrar directs that an appellant should appear by video link, the prison must give precedence to video-links to the Court of Appeal over video-links to the lower courts, including the Crown Court.

39B.4 The copy of the Criminal Appeal Office summary provided to advocates will contain the summary writer's time estimate for the whole hearing including delivery of judgment. It will also contain a time estimate for the judges' reading time of the core material. The Listing Officer will rely on those estimates, unless the advocate for the appellant or the Crown provides different time estimates to the Listing Officer, in writing, within 7 days of the receipt of the summary by the advocate. Where the time estimates are considered by an advocate to be inadequate, or where the estimates have been altered because, for example, a ground of appeal has been abandoned, it is the duty of the advocate to inform the Court promptly, in which event the Registrar will reconsider the time estimates and inform the parties accordingly.

39B.5 The following target times are set for the hearing of appeals. Target times will run from the receipt of the appeal by the Listing Officer, as being ready for hearing.

39B.6

NATURE OF APPEAL	*FROM RECEIPT BY LISTING OFFICER TO FIXING OF HEARING DATE*	*FROM FIXING OF HEARING DATE TO HEARING*	**TOTAL TIME FROM RECEIPT BY LISTING OFFICER TO HEARING**
Sentence Appeal	14 days	14 days	28 days

Conviction Appeal	21 days	42 days	63 days
Conviction Appeal where witness to attend	28 days	52 days	80 days

39B.7 Where legal vacations impinge, these periods may be extended. Where expedition is required, the Registrar may direct that these periods be abridged.

39B.8 "Appeal" includes an application for leave to appeal which requires an oral hearing.

39C Appeal notices containing grounds of appeal

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 in accordance with CrimPR 39.3. The grounds must:

i. be concise; and

ii. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing.

Appellants and advocates should keep in mind the powers of the court and the Registrar to return for revision, within a directed period, grounds that do not comply with the rule or with these directions, including grounds that are so prolix or diffuse as to render them incomprehensible. They should keep in mind also the court's powers to refuse permission to appeal on any ground that is so poorly presented as to render it unarguable and thus to exclude it from consideration by the court: see CrimPR 36.14. 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(1)(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.

39C.4 Where the appellant wants to rely on a ground of appeal that is not identified by the appeal notice, an application under CrimPR 36.14(5) is required. In R v James and Others [2018] EWCA Crim 285 the Court of Appeal identified as follows the considerations that obtain and the criteria that the court will apply on any such application:

> (a) as a general rule all the grounds of appeal that an appellant wishes to advance should be lodged with the appeal notice, subject to their being perfected on receipt of transcripts from the Registrar.
>
> (b) the application for permission to appeal under section 31 of the Criminal Appeal Act 1968 is an important stage in the process. It may not be treated lightly or its determination in effect ignored merely because fresh representatives would have done or argued things differently to their predecessors. Fresh grounds advanced by fresh representatives must be particularly cogent.
>
> (c) as well as addressing the factors material to the determination of an application for an extension of time within which to renew an application for permission to appeal, if that is required, on an application under CrimPR 36.14(5) the appellant or his or her representatives must address directly the factors which the court is likely to consider relevant when deciding whether to allow the substitution or addition of grounds of appeal. Those factors include (but this list is not exhaustive):
>
> > (i) the extent of the delay in advancing the fresh ground or grounds;
> >
> > (ii) the reasons for that delay;
> >
> > (iii) whether the facts or issues the subject of the fresh ground were known to the appellant's representatives when they advised on appeal;
> >
> > (iv) the interests of justice and the overriding objective in Part 1 of the Criminal Procedure Rules.
>
> (d) on the assumption that an appellant will have received advice on appeal from his or her trial advocate, who will have settled the grounds of appeal in the original appeal notice or who will have advised that there are no reasonably arguable grounds to challenge the safety of the conviction:
>
> > (i) fresh representatives should comply with the duty of due diligence explained in McCook [2014] EWCA Crim 734. Waiver of privilege by the appellant is very likely to be required.
> >
> > (ii) once the trial lawyers have responded, the fresh representatives should again consider with great care their duty to the court and whether the proposed fresh grounds should be advanced as reasonably arguable and particularly cogent.

(iii) the Registrar will obtain, before the determination of the application under CrimPR 36.14(5), transcripts relevant to the fresh grounds and, where required, a respondents' notice relating to the fresh grounds.

(e) while an application under CrimPR 36.14(5) will not require "exceptional leave", and hence the demonstration of substantial injustice should it not be granted, the hurdle for the applicant is a high one nonetheless. Representatives should remind themselves of the provisions of paragraph 39C.2 above.

(f) permission to renew out of time an application for permission to appeal is not given unless the applicant can persuade the court that very good reasons exist. If that application to renew out of time is accompanied by an application to vary the grounds of appeal, the hurdle will be higher still.

(g) any application to substitute or add grounds will be considered by a fully constituted court and at a hearing, not on the papers.

(h) on any renewal of an application for permission to appeal accompanied by an application under CrimPR 36.14(5), if the court refuses those applications it has the power to make a loss of time order or an order for costs in line with R v Gray and Others [2014] EWCA Crim 2372. By analogy with R v Kirk [2015] EWCA Crim 1764 (where the court refused an extension of time) the court has the power to order payment of the costs of obtaining the respondent's notice and any additional transcripts.

Direct Lodgement

39C.5 With effect from 1st October 2018, Forms NG and Grounds of Appeal which are covered by Part 39 of the Criminal Procedure Rules (appeal to the Court of Appeal about conviction or sentence) are to be lodged directly with the Criminal Appeal Office and not with the Crown Court where the appellant was convicted or sentenced. This Practice Direction must be read alongside the detailed guidance notes that have been produced to accompany the new forms. They are available:

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

From this date the Crown Court will no longer accept Forms NG and will return them to the sender. Forms NG and Grounds of Appeal should only be lodged once. They should, where possible, be lodged by email. Applications should not be lodged directly onto the Digital Case System. Applications must be lodged at the following address: criminalappealoffice.applications@hmcts.x.gsi.gov.uk

If you do not have access to an email account, you should post Form NG and the Grounds of Appeal to:

The Registrar, Criminal Appeal Office, Royal Courts of Justice, Strand, London WC2A 2LL.

Once an application has been effectively lodged, the Registrar will confirm receipt within 7 days.

Service

39C.6 Legal representatives should make sure they provide their secure email address for the purposes of correspondence and service of document. The date of service for new applications lodged by email will be the day on which it is sent, if that day is a business day and if sent no later than 2:30pm on that day, otherwise the date of service will be on the next business day after it was sent.

Completing the Form NG

39C.7 All applications must be compliant with the relevant Criminal Procedure Rules, particularly those in Part 39. A separate Form NG should be completed for each substantive application which is being made. Each application (conviction, sentence and confiscation order) has its own Form NG and must be drafted and lodged as a stand-alone application.

39D Respondents' notices

CPD IX Appeal 39D: RESPONDENTS' NOTICES

39D.1 The requirements for the service of respondents' notices and the time limits for doing so are as set out in CrimPR Part 39. Any respondent's notice served should be in accordance with CrimPR 39.6. The Court does not require a response to the respondent's notice.

39E Loss of time

CPD IX Appeal 39E: LOSS OF TIME

39E.1 Both the Court and the single judge have power, in their discretion, under the Criminal Appeal Act 1968 sections 29 and 31, to direct that part of the time during which an applicant is in custody after lodging his notice of application for leave to appeal should not count towards sentence. When leave to appeal has been refused by the single judge, it is necessary to consider the reasons given by the single judge before making a decision whether to renew the application. Where an application devoid of merit has been refused by the single judge he may indicate that the Full Court should consider making a direction for loss of time on renewal of the application. However, the Full Court may make such a direction whether or not such an indication has been given by the single judge.

39E.2 The case of *R v Gray & Others* [2014] EWCA Crim 2372 makes clear "that unmeritorious renewal applications took up a wholly disproportionate amount of staff and judicial resources in preparation and hearing time. They also wasted significant sums of public money… The more time the Court of Appeal Office and the judges spent on unmeritorious applications, the longer the waiting times were likely to be….The only means the court has of discouraging unmeritorious

applications which waste precious time and resources is by using the powers given to us by Parliament in the Criminal Appeal Act 1968 and the Prosecution of Offenders Act 1985. "

39E.3 Further, applicants and counsel are reminded of the warning given by the Court of Appeal in *R v Hart and Others* [2006] EWCA Crim 3239, [2007] 1 Cr. App. R. 31, [2007] 2 Cr. App. R. (S.) 34 and should 'heed the fact that this court is prepared to exercise its power … The mere fact that counsel has advised that there are grounds of appeal will not always be a sufficient answer to the question as to whether or not an application has indeed been brought which was totally without merit.'

39E.4 Where the single judge has not indicated that the Full Court should consider making a Loss of Time Order because the defendant has already been released, the case of *R v Terence Nolan* [2017] EWCA Crim 2449 indicates that the single judge should consider what, if any, costs have been incurred by the Registrar and the Prosecution and should make directions accordingly. Reference should be made to the relevant Costs Division of the Criminal Practice Direction.

39F Skeleton arguments

CPD IX Appeal 39F: SKELETON ARGUMENTS

39F.1 Advocates should always ensure that the court, and any other party as appropriate, has a single document containing all of the points that are to be argued. The appeal notice must comply with the requirements of CrimPR 39.3. In cases of an appeal against conviction, advocates must serve a skeleton argument when the appeal notice does not sufficiently outline the grounds of the appeal, particularly in cases where a complex or novel point of law has been raised. In an appeal against sentence it may be helpful for an advocate to serve a skeleton argument when a complex issue is raised.

39F.2 The appellant's skeleton argument, if any, must be served no later than 21 days before the hearing date, and the respondent's skeleton argument, if any, no later than 14 days before the hearing date, unless otherwise directed by the Court.

39F.3 Paragraphs XII D.17 to D.23 of these Practice Directions set out the general requirements for skeleton arguments. A skeleton argument, if provided, should contain a numbered list of the points the advocate intends to argue, grouped under each ground of appeal, and stated in no more than one or two sentences. It should be as succinct as possible. Advocates should ensure that the correct Criminal Appeal Office number and the date on which the document was served appear at the beginning of any document and that their names are at the end.

39F.4 A skeleton argument must comply with the requirements of these Practice Directions and, if applicable, of the court. The Criminal Appeal Office may refuse to accept service of a document that fails to comply and instead return that document to the advocate for amendment.

39G Criminal Appeal Office summaries

CPD IX Appeal 39G: CRIMINAL APPEAL OFFICE SUMMARIES

39G.1 To assist the Court, the Criminal Appeal Office prepares summaries of the cases coming before it. These are entirely objective and do not contain any advice about how the Court should deal with the case or any view about its merits. They consist of two Parts.

39G.2 Part I, which is provided to all of the advocates in the case, generally contains:

(a) particulars of the proceedings in the Crown Court, including representation and details of any co-accused,

(b) particulars of the proceedings in the Court of Appeal (Criminal Division),

(c) the facts of the case, as drawn from the transcripts, appeal notice, respondent's notice, witness statements and / or the exhibits,

(d) the submissions and rulings, summing up and sentencing remarks.

39G.3 The contents of the summary are a matter for the professional judgment of the writer, but an advocate wishing to suggest any significant alteration to Part I should write to the Registrar of Criminal Appeals. If the Registrar does not agree, the summary and the letter will be put to the Court for decision. The Court will not generally be willing to hear oral argument about the content of the summary.

39G.4 Advocates may show Part I of the summary to their professional or lay clients (but to no one else) if they believe it would help to check facts or formulate arguments, but summaries are not to be copied or reproduced without the permission of the Criminal Appeal Office; permission for this will not normally be given in cases involving children, or sexual offences, or where the Crown Court has made an order restricting reporting.

39G.5 Unless a judge of the High Court or the Registrar of Criminal Appeals gives a direction to the contrary, in any particular case involving material of an explicitly salacious or sadistic nature, Part I will also be supplied to appellants who seek to represent themselves before the Full Court, or who renew to the full court their applications for leave to appeal against conviction or sentence.

39G.6 Part II, which is supplied to the Court alone, contains

(a) a summary of the grounds of appeal and

(b) in appeals against sentence (and applications for such leave), summaries of the antecedent histories of the parties and of any relevant pre-sentence, medical or other reports.

39G.7 All of the source material is provided to the Court and advocates are able to draw attention to anything in it which may be of particular relevance.

39H Criminal Appeal Office bundles & indexes for full court hearings

CPD IX Appeal 39H: CRIMINAL APPEAL OFFICE BUNDLES & INDEXES FOR FULL COURT HEARINGS

39H.1 To assist the full Court, the Criminal Appeal Office will, in most instances, prepare indexed bundles containing the documents and material which the Registrar considers necessary to understand and determine the appeal for each member of the constitution.

39H.2 The Registrar will not provide bundles where a party or the parties have been directed to prepare and lodge indexed bundles, or where an advocate has lodged indexed bundles of their own volition. Where an appellant who is not privately represented is directed to lodge indexed bundles, a Representation Order will usually be granted by the Court or the Registrar for this purpose.

39H.3 Where bundles are prepared by the Criminal Appeal Office, a copy of the index will be provided to the appellant, or if the appellant is represented, to the advocate. If the advocate or appellant considers that there is additional material which it is necessary to include in the bundle, they must notify the Registrar of this in writing.

39H.4 Where indexed bundles are lodged in response to a direction to do so, or of an advocate's own volition, unless otherwise directed, four copies of the indexed bundle should be lodged with the Registrar in good time before the hearing and in accordance with any direction as to the time by which they should be lodged. The bundles should contain only documents and material which are necessary for the proper understanding of, and determination of, the issues involved in the appeal. The index and order of documents / material in the bundles should follow the order of the Registrar's template *Index to Judge's Bundles* available from the Registrar on request.

CrimPR Part 44 Request to the European Court for a preliminary ruling

44A References to the European Court of Justice

CPD IX Appeal 44A: REFERENCES TO THE EUROPEAN COURT OF JUSTICE

44A.1 Further to CrimPR 44.3 of the Criminal Procedure Rules, the order containing the reference shall be filed with the Senior Master of the Queen's Bench Division of the High Court for onward transmission to the Court of Justice of the European Union. The order should be marked for the attention of Mrs Isaac and sent to the Senior Master:

c/o Queen's Bench Division Associates Dept

Room WG03

Royal Courts of Justice

Strand

London

WC2A 2LL

44A.2 There is no longer a requirement that the relevant court file be sent to the Senior Master. The parties should ensure that all appropriate documentation is sent directly to the European Court at the following address:

The Registrar

Court of Justice of the European Union

Kirchberg

L-2925 Luxemburg

44A.3 There is no prescribed form for use but the following details must be included in the back sheet to the order:

i. Solicitor's full address;
ii. Solicitor's and Court references;
iii. Solicitor's e-mail address.

44A.4 The European Court of Justice regularly updates its Recommendation to national courts and tribunals in relation to the initiation of preliminary ruling proceedings. The current Recommendation is 2012/C 338/01: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF

44A.5 The referring court may request the Court of Justice of the European Union to apply its urgent preliminary ruling procedure where the referring court's proceedings relate to a person in custody. For further information see Council Decision 2008/79/EC [2008] OJ L24/42: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:024:0042:0043:EN:PDF

44A.6 Any such request must be made in a document separate from the order or in a covering letter and must set out:

iv. The matters of fact and law which establish the urgency;
v. The reasons why the urgent preliminary ruling procedure applies; and
vi. In so far as possible, the court's view on the answer to the question referred to the Court of Justice of the European Union for a preliminary ruling.

44A.7 Any request to apply the urgent preliminary ruling procedure should be filed with the Senior Master as described above.

X Costs

[Costs Practice Direction]

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION X

COSTS

CrimPR Part 45 Costs

Reference should be made to the Practice Direction (Costs in Criminal Proceedings) 2015.

XI Other proceedings

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION XI

OTHER PROCEEDINGS

CrimPR Part 47 Investigation orders and warrants

47A Investigation orders and warrants

CPD XI Other proceedings 47A: INVESTIGATION ORDERS AND WARRANTS

47A.1 Powers of entry, search and seizure, and powers to obtain banking and other confidential information, are among the most intrusive that investigators can exercise. Every application must be carefully scrutinised with close attention paid to what the relevant statutory provision requires of the applicant and to what it permits. CrimPR Part 47 must be followed, and the prescribed forms (retaining the Notes for Guidance section) must be used. These are designed to prompt applicants, and the courts, to deal with all of the relevant criteria.

47A.2 The issuing of a warrant or the making of such an order is never to be treated as a formality and it is therefore essential that the judge or magistrate considering the application is given, and must take, sufficient time for the purpose. The prescribed forms require the applicant to provide a time estimate, and listing officers and justices' legal advisers should take account of these.

47A.3 Applicants for orders and warrants owe the court duties of candour and truthfulness. On any application made without notice to the respondent, and so on all applications for search warrants, the duty of frank and complete disclosure is especially onerous. The applicant must draw the court's attention to any information that is unfavourable to the application. The existence of unfavourable information will not necessarily lead to the application being refused; it will be a matter for the court what weight to place on each piece of information. As Hughes LJ made clear in *Re Stanford International Limited*[2] "In effect a prosecutor seeking an *ex parte* order must put on his defence hat and ask himself what, if he was representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell

[2] [2010] EWCA Civ 137 at para 159

the judge". This is, as Aitkins LJ recognised, "a heavy burden but a vital safeguard. Full details must be given[3]."

47A.4 Where an applicant supplements an application with additional oral or written information, on questioning by the court or otherwise, it is essential that the court keeps an adequate record. What is needed will depend upon the circumstances. The Rules require that a record of the 'gist' be retained. The purpose of such a record is to allow the sufficiency of the court's reasons for its decision subsequently to be assessed. The gravity of such decisions requires that their exercise should be susceptible to scrutiny and to explanation by reference to all of the information that was taken into account.

47A.5 The forms that accompany CrimPR Part 47 provide for the most frequently encountered applications. The included Notes for Guidance summarise for the applicant and the court the relevant criteria for making and considering an application. However, there are some hundreds of powers of entry, search and seizure, supplied by a corresponding number of legislative provisions. In any criminal matter, if there is no form designed for the particular warrant or order sought, the forms should still be used, as far as is practicable, and adapted as necessary. The applicant should pay particular attention to the specific legislative requirements for the granting of such an application to ensure that the court has all of the necessary information, and, if the court might be unfamiliar with the legislation, should provide a copy of the relevant provisions. Applicants must comply with the duties of candour and truthfulness, and include in their application the declarations required by the Rules and must make disclosure of any unfavourable information to the court.

47B Investigation orders and warrants in the crown court

CPD XI Other proceedings 47B: INVESTIGATION ORDERS AND WARRANTS IN THE CROWN COURT

47B.1 This section covers applications made under:

(i) Schedule 1 Police and Criminal Evidence Act 1984 (PACE);
(ii) Section 2 Criminal Justice Act 1987;
(iii) Drug Trafficking Act 1994;
(iv) Part 8 of the Proceeds of Crime Act 2002;
(v) Section 5 Coroners and Justice Act 2009
(vi) Terrorism Act 2000.

It does NOT cover applications under the Extradition Act 2003.

[3] R (On the Application of S, F and L) v Chief Constable of the British Transport Police and Southwark Crown Court [2013] EWHC 2189 (Admin) at [45 (d)].

Crown Court Centres

47B.2 Investigators must give careful consideration to which Crown Court centre is most appropriate to hear the application. In all cases, the application must explain the rationale for choosing the particular court centre. Relevant considerations will usually be:

- where any subsequent proceedings are likely to be commenced;
- where a main suspect has some geographical connection; and/or
- where, in broad terms, the offending has taken place.

A court centre should not be chosen simply because it is most convenient or proximate to the investigators location. Any dispute over the proper venue for an application should be determined by the relevant Presiding Judges.

47B.3 Where the investigation is complex, lengthy and/or involves multiple suspects all applications should be made to one court centre. To ensure consistency, all subsequent applications arising out of the same or any connected investigation should be made to the same court centre and, where practicable, the same judge.

47B.4 Judges can refuse to determine applications and request they be resubmitted (if necessary to another court) where:

- the application is not in the proper form;
- there is an inaccurate reading time estimate; and/or
- there is insufficient justification for the application to be made at that court centre.

Dealing with applications without a hearing

47B.5 The court must not determine an application in the applicant's absence in the circumstances set out in CrimPR 47.5(2); or in the absence of any respondent in the circumstances set out in CrimPR 47.5(3) and (4).

47B.6 When permitted by the rules, and where the application has been sufficiently completed and submitted on the correct form, there is a presumption that the application will be dealt with without a hearing. The judge is always entitled to require a hearing to clarify omissions or ambiguity on the application, or for any other reason.

47B.7 It will often not be appropriate for a court to deal with an application without a hearing in the following situations:

- where the investigation involved covert activity or the application is based on material gathered covertly;

- where the application is based on material which is especially sensitive and/or where it will be necessary to ensure the security at court of the material produced in support of the application;
- where the case may result in substantial local and/or national public interest;
- where the application is particularly lengthy, serious or complex.

47B.8 Applications should be sent electronically to the designated secure email address at the relevant court centre.

47B.9 A judge considering an application without a hearing will subject the application to the usual intense level of scrutiny ensuring that the relevant statutory requirements have been met. If the judge is not so satisfied then the judge will refuse the application, require further information to be served or adjourn it for a hearing in court, which can be carried out via live link or telephone, where permitted by the Rules. The Court will inform the applicant of the outcome and make the necessary arrangements for any additional hearings that may be required. There is no requirement for any order to be signed by the judge with a "wet ink" signature. The applicant will be notified electronically of any orders that are made.

47B.10 Applications considered without a hearing will be determined by a judge as soon as practicable. Approved orders will be returned electronically to the applicant and an electronic copy must be securely saved by the court.. If there is a particular urgency with any application, that fact should be made clear to the court when it is served and the judge should expedite it where possible.

Listing

47B.11 To assist the listing process, the applicant must supply a realistic estimate of the reading time required when the application is served. This estimate should be provided in the application and in the covering email to which it is attached. The covering email should also stipulate whether there have been any previous applications in the same or any connected investigation and provide the name of the judge who granted any previous Orders.

47B.12 Where the judge has decided that a hearing is required to determine or further consider the application, the expectation is that this hearing should usually take place by live link or telephone.[4] Where the judge directs a hearing at court, any additional material relied on by the applicant must be brought to court on the day of the hearing. Any additional material should not be retained by the court once the application has been determined, but must be taken away by the applicant at the end of the hearing.[5]

[4] Although the court cannot receive evidence by telephone, information in support of the application can be given on oath by this means.

[5] Generally, there are no secure storage at facilities at court centres where sensitive material can be safely left.

47B.13 When listing such hearings consideration should be given to Division XIII Listing of these practice directions which states at A.1 that listing is a judicial responsibility and function. G.3(1) of that division envisages that such applications will be completed by 10.30am or start after 4.30pm so as not to interfere with trials. This general direction does not prevent a judge from considering applications outside of these times where other court business allows.

47B.14 However, as paragraph G.8 of Division XIII Listing makes clear, along with the relevant case law, that the search powers in PACE constitute "a serious inroad upon the liberty of the subject. The responsibility for ensuring that the procedure is not abused lies with circuit judges. It is of cardinal importance that circuit judges should be scrupulous in discharging that responsibility."[6] Accordingly, there must be adequate time allowed for the judge to read carefully the application and all the supporting evidence supplied with it. The judge will require sufficient time to enable a short judgment to be given, where necessary so that in the event of challenge in the Administrative Court there is an explanation of the reasons for the decision for that court to consider.

DARTS Recording

47B.15 Hearings in court are required to be recorded whether on DARTS or some other secure method such as on a hand-held machine. Determination of the method of recording is a matter for the judge.

CrimPR Part 48 Contempt of court

48A Contempt in the face of the magistrates' court

CPD XI Other proceedings 48A: CONTEMPT IN THE FACE OF THE MAGISTRATES' COURT

General

48A.1 The procedure to be followed in cases of contempt of court is given in CrimPR Part 48. The magistrates' courts' power to deal with contempt in the face of the court is contained within section 12 of the Contempt of Court Act 1981. Magistrates' courts also have the power to punish a witness who refuses to be sworn or give evidence under section 97(4) of the Magistrates' Courts Act 1980.

Contempt consisting of wilfully insulting anyone specified in section 12 or interrupting proceedings

48A.2 In the majority of cases, an apology and a promise as to future conduct should be sufficient for the court to order a person's release. However, there are likely to be certain cases where the nature and seriousness of the misconduct requires the court to consider using its powers, under section 12(2) of the Contempt of Court Act 1981, either to fine or to order the person's committal to custody.

[6] *per* Lloyd LJ *R v Maidstone Crown Court, ex p Waitt* [1988] Crim LR 384,

Imposing a penalty for contempt

48A.3 The court should allow the person a further opportunity to apologise for his or her contempt, and should follow the procedure at CrimPR 48.8(4). The court should consider whether it is appropriate to release the person or whether it must exercise its powers to fine the person or to commit the person to custody under section 12 (2) of the 1981 Act. In deciding how to deal with the person, the court should have regard to the period for which he or she has been detained, whether the conduct was admitted and the seriousness of the contempt. Any period of committal to custody should be for the shortest period of time commensurate with the interests of preserving good order in the administration of justice.

50A Extradition: General matters and case management

CPD XI Other proceedings 50A: EXTRADITION: GENERAL MATTERS AND CASE MANAGEMENT

General matters: expedition at all times

50A.1 Compliance with these directions is essential to ensure that extradition proceedings are dealt with expeditiously, both in accordance with the spirit of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and surrender procedures between Member States and the United Kingdom's other treaty obligations. It is of the utmost importance that orders which provide directions for the proper management and progress of cases are obeyed so that the parties can fulfil their duty to assist the court in furthering the overriding objective and in making efficient use of judicial resources. To that end:

(i) the court may, and usually should, give case management directions, which may be based on a model, but adapted to the needs of the individual case, requiring the parties to supply case management information, consistently with the overriding objective of the Criminal Procedure Rules and compatibly with the parties' entitlement to legal professional and litigation privilege;

(ii) a defendant whose extradition is requested must expect to be required to identify what he or she intends to put in issue so that directions can be given to achieve a single, comprehensive and effective extradition hearing at the earliest possible date;

(iii) where the issues are such that further information from the requesting authority or state is needed then it is essential that the request is formulated clearly and in good time, in terms to which the parties can expect to contribute but which terms must be approved by the court, in order that those to whom the request is addressed will be able to understand what is sought, and why, and so can respond promptly;

(iv) where such a request or other document, including a formal notice to the defendant of a post-extradition consent request, requires transmission to an authority or other person in a requesting state or other place outside the UK, it is essential that clear and realistic directions for the transmission are given, identifying who is to be responsible and to what timetable, having regard to the capacity of the proposed courier. Once given, such directions

must be promptly complied with and the court at once informed if difficulties are encountered.

(v) Any skeleton argument must comply with the requirements of these Practice Directions and, if applicable, of the court. (Paragraphs XII D.17 to D.23 set out the general requirements for skeleton arguments. Paragraphs XI 50E.1 to 50E.7 set out some special requirements that apply in an extradition appeal to the High Court.)

General guidance under s. 2(7A) Extradition Act 2003 (as amended by the Anti-Social Behaviour, Crime and Policing Act 2014)

50A.2 When proceeding under section 21A of the Act and considering under subsection (3)(a) of the Act the seriousness of the conduct alleged to constitute the extradition offence, the judge will determine the issue on the facts of each case as set out in the warrant, subject to the guidance in paragraph 50A.3 below.

50A.3 In any case where the conduct alleged to constitute the offence falls into one of the categories in the table at paragraph 50A.5 below, unless there are exceptional circumstances, the judge should generally determine that extradition would be disproportionate. It would follow under the terms of s. 21A(4)(b) of the Act that the judge must order the person's discharge.

50A.4 The exceptional circumstances referred to above in paragraph 50A.3 will include:

i. vulnerable victim;
ii. crime committed against someone because of their disability, gender-identity, race, religion or belief, or sexual orientation;
iii. significant premeditation;
iv. multiple counts;
v. extradition also sought for another offence;
vi. previous offending history.

50A.5 The table is as follows:

Category of offence	**Examples**
Minor **theft** – (not robbery/ burglary or theft from the person)	Where the theft is of a low monetary value and there is a low impact on the victim or indirect harm to others, for example: (a) Theft of an item of food from a supermarket; (b) Theft of a small amount of scrap metal from company premises; (c) Theft of a very small sum of money.
Minor financial offences (**forgery, fraud** and **tax** offences)	Where the sums involved are small and there is a low impact on the victim and / or low indirect harm to others, for example: (a) Failure to file a tax return or invoices on time; (b) Making a false statement in a tax return; (c) Dishonestly applying for a tax refund; (d) Obtaining a bank loan using a forged or falsified document;

	(e) Non-payment of child maintenance.
Minor **road traffic**, **driving** and related offences	Where no injury, loss or damage was incurred to any person or property, for example: (a) Driving whilst using a mobile phone; (b) Use of a bicycle whilst intoxicated.
Minor **public order** offences	Where there is no suggestion the person started the trouble and the offending behaviour was, for example: (a) Non-threatening verbal abuse of a law enforcement officer or government official; (b) Shouting or causing a disturbance, without threats; (c) Quarrelling in the street, without threats.
Minor **criminal damage** (other than by fire)	For example, breaking a window
Possession of controlled substance (other than one with a high capacity for harm such as heroin, cocaine, LSD or crystal meth)	Where it was possession of a very small quantity and intended for personal use

50B Extradition: Management of Appeal to the High Court

CPD XI Other proceedings 50B: MANAGEMENT OF APPEAL TO THE HIGH COURT

50B.1 Applications for permission to appeal to the High Court under the Extradition Act 2003 must be started in the Administrative Court of the Queen's Bench Division at the Royal Courts of Justice in London.

50B.2 A Lord Justice of Appeal appointed by the Lord Chief Justice will have responsibility to assist the President of the Queen's Bench Division with overall supervision of extradition appeals.

Definitions

50B.3 Where appropriate "appeal" includes "application for permission to appeal".

50B.4 "EAW" means European Arrest Warrant.

50B.5 A "nominated legal officer of the court" is a court officer assigned to the Administrative Court Office who is a barrister or solicitor and who has been nominated for the purpose by the Lord Chief Justice under CrimPR 50.18 and 50.30.

Forms

50B.6 The forms are to be used in the High Court, in accordance with CrimPR 50.19, 50.20, 50.21 and 50.22.

50B.7 The forms may be amended or withdrawn from time to time, or new forms added, under the authority of the Lord Chief Justice: see CrimPD I 5A.

Management of the Appeal

50B.8 Where it is not possible for the High Court to begin to hear the appeal in accordance with time limits contained in CrimPR 50.23(1) and (2), the court may extend the time limit if it believes it to be in the interests of justice to do so and may do so even after the time limit has expired.

50B.9 The power to extend those time limits may be exercised by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

50B.10 Case management directions setting down a timetable may be imposed upon the parties by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court. For the court's constitution and relevant powers and duties see section 4 of the Senior Courts Act 1981 and CrimPR 50.18 and 50.30.

Listing of Oral, Renewal and Substantive Hearings

50B.11 Arrangements for the fixing of dates for hearings will be made by a Listing Officer of the Administrative Court under the direction of the judge with overall responsibility for supervision of extradition appeals.

50B.12 A Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court may give such directions to the Listing Officer as they deem necessary with regard to the fixing of dates, including as to whether cases in the same/related proceedings or raising the same or similar issues should be heard together or consecutively under the duty imposed by CrimPR 1.1 (2)(e). Parties must alert the nominated court officer for the need for such directions.

50B.13 Save in exceptional circumstances, regard will not be given to an advocate's existing commitments. This is in accordance with the spirit of the legislation that extradition matters should be dealt with expeditiously. Extradition matters are generally not so complex that an alternative advocate cannot be instructed.

50B.14 If a party disagrees with the time estimate given by the court, they must inform the Listing Office within 5 business days of the notification of the listing and they must provide a time estimate of their own.

Expedited appeals

50B.15 The court may direct that the hearing of an appeal be expedited.

50B.16 The court will deal with requests for an expedited appeal without a hearing. Requests for expedition must be made in writing, either within the appeal notice, or by application notice, clearly marked with the Administrative Court reference number, which must be lodged with the Administrative Court Office or emailed to the appropriate email address: administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk and notice must be given to the other parties.

50B.17 Any requests for an expedited appeal made to an out of hours judge must be accompanied by:

(i) a detailed chronology;

(ii) reasons why the application could not be made within court hours;

(iii) any orders or judgments made in the proceedings.

Amendment to Notices

50B.18 Amendment to Notice of Appeal requiring permission:

(i) subject to CrimPR 50.20(5), an appeal notice may not be amended without the permission of the court: CrimPR 50.17(6)(b);

(ii) an application for permission to amend made before permission to appeal has been considered will be determined without a hearing;

(iii) an application for permission to amend after permission to appeal has been granted and any submissions in opposition will normally be dealt with at the hearing unless there is any risk that the hearing may have to be adjourned. If there is any risk that the application to amend may lead the other party to seek time to answer the proposed amendment, the application must be made as soon as practicable and well in advance of the hearing. A failure to make immediate applications for such an amendment is likely to result in refusal;

(iv) legal representatives or the appellant, if acting in person, must
   a. Inform the court at the time they make the application if the existing time estimate is affected by the proposed amendment; and
   b. Attempt to agree any revised time estimate no later than 5 business days after service of the application.

(v) where the appellant wishes to restore grounds of appeal excluded on the grant of permission to appeal, the procedure is governed by CrimPR 50.22.

50B.19 Amendment to Respondent's Notice:

(i) a respondent's notice may not be amended without the permission of the court: CrimPR 50.17(6)(b);

(ii) an application for permission to amend made before permission to appeal has been considered will be determined without a hearing;

(iii) an application for permission to amend after permission to appeal has been granted and any submissions in opposition will normally be dealt with at the hearing unless there is any risk that the hearing may have to be adjourned. If there is any risk that the application to amend may lead the other party to seek time to answer the proposed amendment, the application must be made as soon as practicable and well in advance of the hearing. A failure to make immediate applications for such an amendment is likely to result in refusal;

(iv) legal representatives or the appellant, if acting in person, must
   a. Inform the court at the time they make the application if the existing time estimate is affected by the proposed amendment; and
   b. Attempt to agree any revised time estimate no later than 5 business days after service of the application.

Use of Live-Links

50B.20 When a party acting in person is in custody, the court office will request the institution to use live-link for attendance at any oral or renewal hearing or

substantive appeal. The institution must give precedence to all such applications in the High Court over live-links to the lower courts, including the Crown Court.

Interpreters

50B.21 It is the responsibility of the Listing Officer to ensure the attendance of an accredited interpreter when an unrepresented party in extradition proceedings is acting in person and does not understand or speak English.

50B.22 Where a party who does not understand or speak English is legally represented it is the responsibility of his/her solicitors to instruct an interpreter if required for any hearing in extradition proceedings.

Disposing of applications and appeals by way of consent

50B.23 CrimPR 50.24 governs the submission of Consent Orders and lists the essential requirements for such orders. Any Consent Order, the effect of which will be to allow extradition to proceed, must specify the date on which the appeal proceedings are to be treated as discontinued, for the purposes of section 36 or 118, as the case may be, of the Extradition Act 2003: whether that is to be the date on which the order is made or some later date. A Consent Order may be approved by a Lord Justice of Appeal, a Single Judge of the High Court or, under CrimPR 50.30(2), a nominated legal officer of the court. The order may, but need not, be pronounced in open court: CrimPR 50.17(1)(c)(iii). Once approved, the order will be sent to the parties and to any other person as required by CrimPR 50.29(3)(b), (c).

50B.24 A Consent Order to allow an appeal brought under s.28 of the Extradition Act 2003 must provide:

(i) for the quashing of the decision of the District Judge in Westminster Magistrates' Court discharging the Requested Person;
(ii) for the matter to be remitted to the District Judge to hold fresh extradition proceedings;
(iii) for any ancillary matter, such as bail or costs.

50B.25 A Consent Order to allow an appeal brought under s.110 of the Extradition Act 2003 must provide:

(i) for the quashing of the decision of the Secretary of State for the Home Department not to order extradition;
(ii) for the matter to be remitted to the Secretary of State to make a fresh decision on whether or not to order extradition;
(iii) for any ancillary matter, such as bail or costs.

50B.26 Where:

(a) a Consent Order is intended to dispose of an application for permission to appeal which has not yet been considered by the court, the order must make clear by what means that will be achieved, bearing in mind that an application for permission which is refused without a hearing can be renewed under CrimPR 50.22(2). If the parties intend to exclude the possibility of renewal the order should declare either (i) that the time limit under rule 50.22(2) is reduced to nil, or (ii) permission to appeal is given and the appeal determined on the other terms of the order.
(b) one of the parties is a child or protected party, the documents served under CrimPR 50.24(5) must include an opinion from the advocate acting on behalf of

the child or protected party and, in the case of a protected party, any relevant documents prepared for the Court of Protection.

Fees

50B.27 Applications to extend Representation Orders do not attract any fee.

50B.28 Fees are payable for all other applications in accordance with the current Fees Order.

50C Extradition: Representation Orders

CPD XI Other proceedings 50C: EXTRADITION: REPRESENTATION ORDERS

50C.1 Representation Orders may be granted by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court upon a properly completed CRM14 being lodged with the court. A Representation Order will cover junior advocate and solicitors for the preparation of the Notice of Appeal to determination of the appeal.

50C.2 Applications to extend Representation Orders may be granted by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated court officer who may direct a case management hearing before a Lord Justice of Appeal, a Single Judge, or a Master of the Administrative Court. Since these applications do not attract a fee, parties may lodge them with the court by attaching them to an email addressed to the nominated legal officer of the court.

50C.3 Applications to extend Representation Orders to cover the instruction of Queen's Counsel to appear either alone or with a junior advocate must be made in writing, either by letter or application notice, clearly marked with the Administrative Court reference number, which must be lodged with the Administrative Court Office or emailed to the appropriate email address: administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk.
The request must:

(i) identify the substantial novel or complex issues of law or fact in the case;
(ii) explain why these may only be adequately presented by a Queen's Counsel;
(iii) state whether a Queen's Counsel has been instructed on behalf of the respondent;
(iv) explain any delay in making the request;
(v) be supported by advice from junior advocate or Queen's Counsel.

50C.4 Applications for prior authority to cover the cost of obtaining expert evidence must be made in writing, either by letter, clearly marked with the Administrative Court reference number, which must be sent or emailed to the Administrative Court Office.
The request must:

(i) confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;
(ii) explain why the evidence was not called at the extradition hearing in Westminster Magistrates' Court and what evidence can be produced to support that;

(iii) explain why the new evidence would have resulted in the District Judge deciding a question at the extradition hearing differently and whether, if so, the District Judge would have been required to make a different order as to discharge of the requested person;
(iv) explain why the evidence was not raised when the case was being considered by the Secretary of State for the Home Department or information was available that was not available at that time;
(v) explain why the new evidence would have resulted in the Secretary of State deciding a question differently, and if the question had been decided differently, the Secretary of State would not have ordered the person's extradition;
(vi) state when the need for the new evidence first became known;
(vii) explain any delay in making the request;
(viii) explain what relevant factual, as opposed to expert evidence, is being given by whom to create the factual basis for the expert's opinion;
(ix) explain why this particular area of expertise is relevant: for example why a child psychologist should be appointed as opposed to a social worker;
(x) state whether the requested person has capacity;
(xi) set out a full breakdown of all costs involved including any VAT or other tax payable, including alternative quotes or explaining why none are available;
(xii) provide a list of all previous extensions of the Representation Order and the approval of expenditure to date;
(xiii) provide a timetable for the production of the evidence and its anticipated effect on the time estimate and hearing date;
(xiv) set out the level of compliance to date with any directions order.

50C.5 Experts must have direct personal experience of and proven expertise in the issue on which a report is sought; it is only if they do have such experience and it is relevant, that they can give evidence of what they have observed.

50C.6 Where an order is granted to extend a Representation Order to obtain further evidence it will still be necessary for the party seeking to rely on the new evidence to satisfy the court hearing the application for permission or the substantive appeal that the evidence obtained should be admitted having regard to sections 27(4) and 29(4) of the Extradition Act 2003 and the judgment in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin).

50C.7 Applications to extend representation for the translation of documents must be made in writing, either by letter, clearly marked with the Administrative Court reference number, which must be sent to Administrative Court Office, The Royal Courts of Justice, Strand, London, WC2A 2LL or emailed to the appropriate email address: administrativecourtoffice.crimex@hmcts.x.gsi.gov.uk
The request should:
(i) explain the importance of the document for which a translation is being sought and the justification for obtaining it;
(ii) explain what it is believed to be contained in the document and the issues it will assist the court to address in hearing the appeal;
(iii) confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;
(iv) confirm that the evidence sought was not called at the extradition hearing in the Westminster Magistrates' Court;

(v) explain why the evidence sought would have resulted in the District Judge deciding a question at the extradition hearing differently and whether, if so, the District Judge would have been required to make a different order as to discharge of the requested person;
(vi) confirm that the new evidence was not raised when the case was being considered by the Secretary of State for the Home Department;
(vii) explain why the new evidence sought would have resulted in the Secretary of State deciding a question differently, and if the question had been decided differently, the Secretary of State would not have ordered the person's extradition;
(viii) confirm when the need for the new evidence first became known;
(ix) explain any delay in making the request;
(x) explain fully the evidential basis for incurring the expenditure;
(xi) explain why the appellant cannot produce the evidence himself or herself in the form of a statement of truth;
(xii) set out a full breakdown of all costs involved including any VAT or other tax payable and the Legal Aid Agency contractual rates;
(xiii) provide a list of all previous extensions of the Representation Order and the expenditure to date.

50C.8 Where an order is made to extend representation to cover the cost of the translation of documents it will still be necessary for the party seeking to rely on the documents as evidence to satisfy the court that it should be admitted at the hearing of the appeal having regard to sections 27(4) and 29(4) of the Extradition Act 2003 and the judgment in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin).

50D Extradition: Applications, etc

CPD XI Other proceedings 50D: EXTRADITION: APPLICATIONS, ETC

50D.1 Extension or abridgement of time

(i) any party who seeks extension or abridgment of time for the service of documents, evidence or skeleton arguments must apply to the High Court on the appropriate form and pay the appropriate fee;
(ii) applications for extension or abridgment of time may be determined by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court;
(iii) applications for extension of time must include a witness statement setting out the reasons for non-compliance with any previous order and the proposed timetable for compliance;
(iv) any application made to an out of hours judge must be accompanied with:
  a. a detailed chronology;
  b. reasons why the application could not be made within court hours;
  c. any orders or judgments made in the proceedings.

Representatives

50D.2 CrimPR Part 46 applies.

50D.3 Where under CrimPR 46.2(1)(c) a legal representative withdraws from the case then that representative should satisfy him or herself that the defendant is aware of the time and date of the appeal hearing and of the need to attend, by live link if the court has so directed. If the legal representative has any reason to doubt that the defendant is so aware then he or she should promptly notify the Administrative Court Office.

Application to adjourn

50D.4 Where a hearing date has been fixed, any application to vacate the hearing must be made on the appropriate form. A fee is required for the application if it is made within 14 days of the hearing date. The application must:

(i) explain the reasons why an application is being made to vacate the hearing;
(ii) detail the views of the other parties to the appeal;
(iii) include a draft order with the application notice.

50D.5 If the parties both seek an adjournment then the application must be submitted for consideration by a Lord Justice of Appeal, a Single Judge of the High Court or a Master of the Administrative Court. Exceptional circumstances must be shown if a date for the hearing has been fixed or the adjournment will result in material delay to the determination of the appeal.

50D.6 An application to adjourn following a compromise agreement must be supported by evidence justifying exceptional circumstances and why it is in compliance with the overriding objective.

Variation of directions

50D.7 Where parties are unable to comply with any order of the court they must apply promptly to vary directions before deadlines for compliance have expired and seek further directions. An application to vary directions attracts a fee and the application notice, to be submitted on the appropriate form, must:

(i) provide full and proper explanations for why the current and existing directions have not been complied with;
(ii) detail the views of the other parties to the appeal;
(iii) include a draft order setting out in full the timetable and directions as varied i.e. a superseding order which stands alone.

50D.8 A failure to make the application prior to the expiry of the date specified in the order will generally result in the refusal of the application unless good reasons are shown.

Application to certify a point of law of general public importance

50D.9 Where an application is made under CrimPR 50.25(2)(b) the application must be made on the appropriate form accompanied by the relevant fee.

50D.10 Any response to the application must be made within 10 business days.

50D.11 Where an application to certify is granted but permission to appeal to the Supreme Court is refused, it shall be for those representing the Requested Person to apply for an extension of the Representation Order to cover proceedings in the Supreme Court, if so advised.

50D.12 The representation order may be extended by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

50D.13 The result of the application to certify a point of law of general public importance and permission to appeal to the Supreme Court may be notified in advance to the legal representatives but legal representatives must not communicate it to the Requested Person until 1 hour before the pronouncement is made in open court.

50D.14 There shall be no public announcement of the result until after it has been formally pronounced.

Application to reopen the determination of an appeal

50D.15 An application under CrimPR 50.27 to reopen an appeal must be referred to the court that determined the appeal, but may if circumstances require be considered by a judge or judges other than those who determined the original appeal.

Application to extend required period for removal pursuant to section 36 of the Extradition Act 2003

50D.16 Where an application is made for an extension of the required period within which to extradite a Requested Person it must be accompanied by:

(i) a witness statement explaining why it is not possible to remove the Requested Person within the required period and the proposed timetable for removal;

(ii) a draft order.

50D.17 The application to extend time may be made before or after the expiry of the required period for extradition, but the court will scrutinise with particular care an application made after its expiry.

50D.18 Where extensions of time are sought for the same reason in respect of a number of Requested Persons who are due to be extradited at the same time, a single application may be made to the court listing each of the Requested Persons for whom an extension is sought.

50D.19 The application may be determined by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court and a single order listing those persons may be granted.

Application for directions ancillary to a discharge pursuant to section 42 or 124 of the Extradition Act 2003

50D.20 Where the High Court is informed that the warrant or extradition request has been withdrawn then unless ancillary matters are dealt with by Consent Order an application notice must be issued seeking any such directions. The notice of discharge of a Requested Person must be accompanied by:

(i) the notification by the requesting state that the EAW has been withdrawn together with a translation of the same;

(ii) a witness statement containing:

a. details of whether the withdrawn EAW is the only EAW outstanding in respect of the Requested Person;

b. details of other EAWs outstanding in respect of the Requested Person and the stage which the proceedings have reached;

c. whether only part of the EAW has been withdrawn;
d. details of any bail conditions;
e. details of any institution in which the Requested Person is being detained, the Requested Person's prison number and date of birth.

50D.21 The order for discharge may be made by a Lord Justice of Appeal, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

50D.22 It is the responsibility of the High Court to serve the approved order on the appropriate institution and Westminster Magistrates' Court.

50E Extradition: Court Papers

CPD XI Other proceedings 50E: EXTRADITION: COURT PAPERS

Skeleton arguments

50E.1 The court on granting permission to appeal or directing an oral hearing for permission to appeal will give directions as to the filing of skeleton arguments. Strict compliance is required with all time limits.

50E.2 A skeleton argument must:

(i) not normally exceed 25 pages (excluding front sheets and back sheets) and be concise;
(ii) be printed on A4 paper in not less than 12 point font and 1.5 line spacing;
(iii) define the issues in the appeal;
(iv) be set out in numbered paragraphs;
(v) be cross-referenced to any relevant document in the bundle;
(vi) be self-contained and not incorporate by reference material from previous skeleton arguments;
(vii) not include extensive quotations from documents or authorities.

50E.3 Where it is necessary to refer to an authority, the skeleton argument must:

(i) state the proposition of law the authority demonstrates; and
(ii) identify but not quote the parts of the authority that support the proposition.

50E.4 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.

50E.5 A chronology of relevant events will be necessary in most appeals.

50E.6 Where a skeleton argument has been prepared in respect of an application for permission to appeal, the same skeleton argument may be relied upon in the appeal upon notice being given to the court or a replacement skeleton may be lodged not less than 10 business days before the hearing of the appeal.

50E.7 At the hearing the court may refuse to hear argument on a point not included in a skeleton argument filed within the prescribed time.

Bundles

50E.8 The bundle for the hearing should be agreed by the parties save where the Requested Person is acting in person. In those circumstances the court expects the Requesting State to prepare the bundle.

50E.9 The bundle must be paginated and indexed.

50E.10 Subject to any order made by the court, the following documents must be included in the appeal bundle:

(i) a copy of the appellant's notice;
(ii) a copy of any respondent's notice;
(iii) a copy of any appellant's or respondent's skeleton argument;
(iv) a copy of the order under appeal;
(v) a copy of any order made by the Court in the exercise of its case management powers;
(vi) any judgment of the Court made in a previous appeal involving the party or parties which is relevant to the present proceedings.
(vii) where the bundle of papers reaches more than 200 pages, the parties should agree a core appeal bundle which must contain (i)-(vi) above.

50E.11 The Bundle should only contain relevant documents and must not include duplicate documents.

50E.12 Bundles lodged with the court will not be returned to the parties but will be destroyed in the confidential waste system at the conclusion of the proceedings and without further notification.

50F Extradition: Consequences of non-compliance with directions

CPD XI Other proceedings 50F: EXTRADITION: CONSEQUENCES OF NON COMPLIANCE WITH DIRECTIONS

50F.1 Failure to comply with these directions will lead to applications for permission and appeals being dealt with on the material available to the court at the time when the decision is made.

50F.2 Judges dealing with extradition appeals will seek full and proper explanations for any breaches of the rules and the provisions of this Practice Direction.

50F.3 If no good explanation can be given immediately by counsel or solicitors, the senior partner or the departmental head responsible is likely to be called to court to explain any failure to comply with a court order. Where counsel or solicitors fail to obey orders of the court and are unable to provide proper and sufficient reasons for their disobedience they may anticipate the matter being formally referred to the President of the Queen's Bench Division with a recommendation that the counsel or solicitors involved be reported to their professional bodies.

50F.4 The court may also refuse to admit any material or any evidence not filed in compliance with the order for directions or outside a time limit specified by the court.

50F.5 A failure to comply with the time limits or other requirements for skeleton arguments will have the consequences specified in 50E.7.

XII General Application

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION XII

GENERAL APPLICATION

A Court dress

CPD XII General application A: COURT DRESS

A.1 In magistrates' courts, advocates appear without robes or wigs. In all other courts, Queen's Counsel wear a short wig and a silk (or stuff) gown over a court coat with bands, junior counsel wear a short wig and stuff gown with bands. Solicitors and other advocates authorised under the Courts and Legal Services Act 1990 wear a black solicitor's gown with bands; they may wear short wigs in circumstances where they would be worn by Queen's Counsel or junior counsel.

A.2 High Court Judges hearing criminal cases may wear the winter criminal robe year-round. However, scarlet summer robes may be worn.

B Modes of address and titles of judges and magistrates

CPD XII General application B: MODES OF ADDRESS AND TITLES OF JUDGES AND MAGISTRATES

Modes of Address

B.1 The following judges, when sitting in court, should be addressed as 'My Lord' or 'My Lady', as the case may be, whatever their personal status:

(a) Judges of the Court of Appeal and of the High Court;

(b) any Circuit Judge sitting as a judge of the Court of Appeal (Criminal Division) or the High Court under section 9(1) of the Senior Courts Act 1981;

(c) any judge sitting at the Central Criminal Court;

(d) any Senior Circuit Judge who is an Honorary Recorder.

B.2 Subject to the paragraph above, Circuit Judges, qualifying judge advocates, Recorders, Deputy Circuit Judges, Deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 1981 and District Judges (Magistrates' Courts) should be addressed as 'Your Honour' when sitting in the Crown Court.

District Judges (Magistrates' Courts) should be addressed as "Sir [or Madam]" or "Judge" when sitting in the Magistrates' Court.

Magistrates in court should be addressed through the Chairperson as "Sir[or Madam]" or collectively as "Your Worships".

Description

B.3 In cause lists, forms and orders members of the judiciary should be described as follows:

(a) Circuit Judges, as 'His [or Her] Honour Judge A'.

When the judge is sitting as a judge of the High Court under section 9(1) of the Senior Courts Act 1981, the words 'sitting as a judge of the High Court' should be added;

(b) Recorders, as 'Mr [or Mrs, Ms or Miss] Recorder B'.

This style is appropriate irrespective of any honour or title which the recorder might possess, but if in any case it is desired to include an honour or title, the alternative description, 'Sir CD, Recorder' or 'The Lord D, Recorder' may be used;

(c) Deputy Circuit Judges, as 'His [or Her] Honour EF, sitting as a Deputy Circuit Judge'.

(d) Deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 1981, as 'Mr[or Mrs, Ms, or Miss] GH sitting as a Deputy High Court Judge'

(e) qualifying judges advocates, as 'His [or Her] Honour IJ, sitting as a qualifying judge advocate.'

(f) District Judges (Magistrates' Courts), as "District Judge (Magistrates' Courts) K"

C Availability of judgments given in the Court of Appeal and the High Court

CPD XII General application C: AVAILABILITY OF JUDGMENTS GIVEN IN THE COURT OF APPEAL AND THE HIGH COURT

C.1 For cases in the High Court, reference should be made to Practice Direction 40E, the supplementary Practice Direction to the Civil Procedure Rules Part 40.

C.2 For cases in the Court of Appeal (Criminal Division), the following provisions apply.

Availability of reserved judgments before handing down, corrections and applications consequential on judgment

C.3 Where judgment is to be reserved the Presiding Judge may, at the conclusion of the hearing, invite the views of the parties' legal representatives as to the arrangements to be made for the handing down of the judgment.

C.4 Unless the court directs otherwise, the following provisions apply where the Presiding Judge is satisfied that the judgment will attract no special degree of confidentiality or sensitivity.

C.5 The court will provide a copy of the draft judgment to the parties' legal representatives about three working days before handing down, or at such other time as the court may direct. Every page of every judgment which is made available in this way will be marked "Unapproved judgment: No permission is granted to copy or use in court." The draft is supplied in confidence and on the conditions that:

(a) neither the draft judgment nor its substance will be disclosed to any other person or used in the public domain; and

(b) no action will be taken (other than internally) in response to the draft judgment, before the judgment is handed down.

C.6 Unless the parties' legal representatives are told otherwise when the draft judgment is circulated, any proposed corrections to the draft judgment should be sent to the clerk of the judge who prepared the draft (or to the associate, if the judge has no clerk) with a copy to any other party's legal representatives, by 12 noon on the day before judgment is handed down.

C.7 If, having considered the draft judgment, the prosecution will be applying to the Court for a retrial or either party wishes to make any other application consequent on the judgment, the judge's clerk should be informed with a time estimate for the application by 12 noon on the day before judgment is handed down. This will enable the court to make appropriate listing arrangements and notify advocates to attend if the court so requires. There is no fee payable to advocates who attend the hand down hearing if not required to do so by the court. If either party is considering applying to the Court to certify a point for appeal to the Supreme Court, it would assist if the judge's clerk could be informed at the same time, although this is not obligatory as under section 34 of the Criminal Appeal Act 1968, the time limit for such applications is 28 days.

Communication to the parties including the defendant or the victim

C.8 The contents are not to be communicated to the parties, including to the defendant, respondent or the victim (defined as a person entitled to receive services under the Code of Practice for Victims of Crime) until two hours before the listed time for pronouncement of judgment.

C.9 Judges may permit more information about the result of a case to be communicated on a confidential basis to the parties including to the defendant, respondent or the victim at an earlier stage if good reason is shown for making such a direction.

C.10 If, for any reason, the parties' legal representatives have special grounds for seeking a relaxation of the usual condition restricting disclosure to the parties, a request for relaxation of the condition may be made informally through the judge's clerk (or through the associate, if the judge has no clerk).

C.11 If the parties or their legal representatives are in any doubt about the persons to whom copies of the draft judgment may be distributed they should enquire of the judge or Presiding Judge.

C.12 Any breach of the obligations or restrictions in this section or failure to take reasonable steps to ensure compliance may be treated as contempt of court.

Restrictions on disclosure or reporting

C.13 Anyone who is supplied with a copy of the handed-down judgment, or who reads it in court, will be bound by any direction which the court may have given in a child case under section 39 of the Children and Young Persons Act 1933 or section 45 or 45A of the Youth Justice and Criminal Evidence Act 1999, or any other form of restriction on disclosure, or reporting, of information in the judgment.

C.14 Copies of the approved judgment can be ordered from the official shorthand writers, on payment of the appropriate fee. Judgments identified as of legal or public interest will generally be made available on the website managed by BAILLI: http://www.bailii.org/

D Citation of authority and provision of copies of judgments to the Court and Skeleton Arguments

CPD XII General Application D: CITATION OF AUTHORITY AND PROVISION OF COPIES OF JUDGMENTS TO THE COURT AND SKELETON ARGUMENTS

D.1 This Practice Direction applies to all criminal matters before the Court of Appeal (Criminal Division), the Crown Court and the magistrates' courts. In relation to those matters only, Practice Direction (Citation of Authorities) [2012] 1 WLR 780 is hereby revoked.

CITATION OF AUTHORITY

D.2 In *R v Erskine; R v Williams* [2009] EWCA Crim 1425, [2010] 1 W.L.R. 183, (2009) 2 Cr. App. R. 29 the Lord Chief Justice stated:

> 75. The essential starting point, relevant to any appeal against conviction or sentence, is that, adapting the well known aphorism of Viscount Falkland in 1641: if it is not *necessary* to refer to a previous decision of the court, it is *necessary* not to refer to it. Similarly, if it is not *necessary* to include a previous decision in the bundle of authorities, it is *necessary* to exclude it. That approach will be rigidly enforced.
>
> 76. It follows that when the advocate is considering what authority, if any, to cite for a proposition, only an authority which establishes the principle should be cited. Reference should not be made to authorities which do no more than either (a) illustrate the principle or (b) restate it.
>
> 78. Advocates must expect to be required to justify the citation of each authority relied on or included in the bundle. The court is most unlikely to be prepared to look at an authority which does no more than illustrate or restate an established proposition.
>
> 80. … In particular, in sentencing appeals, where a definitive Sentencing Guidelines Council guideline is available there will rarely be any

advantage in citing an authority reached before the issue of the guideline, and authorities after its issue which do not refer to it will rarely be of assistance. In any event, where the authority does no more than uphold a sentence imposed at the Crown Court, the advocate must be ready to explain how it can assist the court to decide that a sentence is manifestly excessive or wrong in principle.

D.3 Advocates should only cite cases when it is necessary to do so; when the case identifies or represents a principle or the development of a principle. In sentencing appeals, other cases are rarely helpful, providing only an illustration, and this is especially true if there is a sentencing guideline. Unreported cases should only be cited in exceptional circumstances, and the advocate must expect to explain why such a case has been cited.

D.4 Advocates should not assume that because a case cited to the court is not referred to in the judgment the court has not considered it; it is more likely that the court was not assisted by it.

D.5 When an authority is to be cited, whether in written or oral submissions, the advocate should always provide the neutral citation followed by the law report reference.

D.6 The following practice should be followed:

i) Where a judgment is reported in the Official Law Reports (A.C., Q.B., Ch., Fam.) published by the Incorporated Council of Law Reporting for England and Wales or the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing) one of those two series of reports must be cited; either is equally acceptable. However, where a judgment is reported in the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing) that reference must be given in addition to any other reference. Other series of reports and official transcripts of judgment may only be used when a case is not reported, or not yet reported, in the Official Law Reports or the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing).

ii) If a judgment is not reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), but it is reported in an authoritative series of reports which contains a headnote and is made by individuals holding a Senior Courts qualification (for the purposes of section 115 of the Courts and Legal Services Act 1990), that report should be cited.

iii) Where a judgment is not reported in any of the reports referred to above, but is reported in other reports, they may be cited.

iv) Where a judgment has not been reported, reference may be made to the official transcript if that is available, not the handed-down text of the judgment, as this may have been subject to late revision

after the text was handed down. Official transcripts may be obtained from, for instance, BAILLI (http://www.bailii.org/).

D.7 In the majority of cases, it is expected that all references will be to the Official Law Reports and the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing); it will be rare for there to be a need to refer to any other reports. An unreported case should not be cited unless it contains a relevant statement of legal principle not found in reported authority, and it is expected that this will only occur in exceptional circumstances.

PROVISION OF COPIES OF JUDGMENTS TO THE COURT

D.8 The paragraphs below specify whether or not copies should be provided to the court. Authorities should not be included for propositions not in dispute. If more than one authority is to be provided, the copies should be presented in paginated and tagged bundles.

D.9 If required, copies of judgments should be provided either by way of a photocopy of the published report or by way of a copy of a reproduction of the judgment in electronic form that has been authorised by the publisher of the relevant series, but in any event-

i) the report must be presented to the court in an easily legible form (a 12-point font is preferred but a 10 or 11-point font is acceptable), and

ii) the advocate presenting the report must be satisfied that it has not been reproduced in a garbled form from the data source.

In any case of doubt the court will rely on the printed text of the report (unless the editor of the report has certified that an electronic version is more accurate because it corrects an error contained in an earlier printed text of the report).

D.10 If such a copy is unavailable, a printed transcript such as from BAILLI may be included.

Provision of copies to the Court of Appeal (Criminal Division)

D.11 Advocates must provide to the Registrar of Criminal Appeals, with their appeal notice, respondent's notice or skeleton argument, a list of authorities upon which they wish to rely in their written or oral submissions. The list of authorities should contain the name of the applicant, appellant or respondent and the Criminal Appeal Office number where known. The list should include reference to the relevant paragraph numbers in each authority. An updated list can be provided if a new authority is issued, or in response to a respondent's notice or skeleton argument. From time to time, the Registrar may issue guidance as to the style or content of lists of authorities, including a suggested format; this guidance should be followed by all parties. The latest guidance is available from the Criminal Appeal Office.

D.12 If the case cited is reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), the law report reference

must be given after the neutral citation, and the relevant paragraphs listed, but copies should not be provided to the court.

D.13 If, exceptionally, reference is made to a case that is not reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), three copies must be provided to the Registrar with the list of authorities and the relevant appeal notice or respondent's notice (or skeleton argument, if provided). The relevant passages of the authorities should be marked or sidelined.

Provision of copies to the Crown Court and the magistrates' courts

D.14 When the court is considering routine applications, it may be sufficient for the court to be referred to the applicable legislation or to one of the practitioner texts. However, it is the responsibility of the advocate to ensure that the court is provided with the material that it needs properly to consider any matter.

D.15 If it would assist the court to consider any authority, the directions at paragraphs D.2 to D.7 above relating to citation will apply and a list of authorities should be provided.

D.16 Copies should be provided by the party seeking to rely upon the authority in accordance with CrimPR 24.13. This Rule is applicable in the magistrates' courts, and in relation to the provision of authorities, should also be followed in the Crown Court since courts often do not hold library stock (see CrimPR 25.17). Advocates should comply with paragraphs D.8 to D.10 relating to the provision of copies to the court.

SKELETON ARGUMENTS

D.17 The court may give directions for the preparation of skeleton arguments. Such directions will provide for the time within which skeleton arguments must be served and for the issues which they must address. Such directions may provide for the number of pages, or the number of words, to which a skeleton argument is to be confined. Any such directions displace the following to the extent of any inconsistency. Subject to that, however, a skeleton argument must:

i. not normally exceed 15 pages (excluding front sheets and back sheets) and be concise;

ii. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing;

iii. define the issues;

iv. be set out in numbered paragraphs;

v. be cross-referenced to any relevant document in any bundle prepared for the court;

vi. be self-contained and not incorporate by reference material from previous skeleton arguments;

vii. not include extensive quotations from documents or authorities.

D.18 Where it is necessary to refer to an authority, the skeleton argument must:

i. state the proposition of law the authority demonstrates; and

ii. identify but not quote the parts of the authority that support the proposition.

D.19 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.

D.20 A chronology of relevant events will be necessary in most cases.

D.21 There are directions at paragraphs I 3C.3 and 3C.4 of these Practice Directions that apply to the service of skeleton arguments in support of, and in opposition to, an application to stay an indictment on the grounds of abuse of process; and directions at paragraphs IX 39F.1 to 39F.3 that apply to the service of skeleton arguments in the Court of Appeal. Where a skeleton argument has been prepared in respect of an application for permission to appeal, the same skeleton argument may be relied upon in the appeal upon notice being given to the court, or a replacement skeleton may be served to the timetable set out in those paragraphs.

D.22 At the hearing the court may refuse to hear argument on a point unless it is included in a skeleton argument which (i) is served within the required time, and (ii) complies with the requirements of these Practice Directions (as varied, if applicable, by direction of the court). Any application for a variation, or further variation, of those requirements must give reasons, and such an application must accompany any skeleton argument that does not comply.

D.23 In *R v James, R v Selby* [2016] EWCA Crim 1639; [2017] Crim.L.R. 228 the Court of Appeal observed (at paragraphs 52 to 54):

> "Legal documents of unnecessary and too often of excessive length offer very little assistance to the court. In *Tombstone Ltd v Raja* [2008] EWCA Civ 1441, [2009] 1 WLR 1143 Mummery LJ said:
>
> "Practitioners ... are well advised to note the risk of the court's negative reaction to unnecessarily long written submissions. The skeleton argument procedure was introduced to assist the court, as well as the parties, by improving preparations for, and the efficiency of, adversarial oral hearings, which remain central to this court's public role... An unintended and unfortunate side effect of the growth in written advocacy... has been that too many practitioners, at increased cost to their clients and diminishing assistance to the court, burden their opponents and the court with written briefs."
>
> He might have penned those remarks had he been sitting in these two cases, and many more, in this Division.

In *Standard Bank PLC v Via Mat International* [2013] EWCA Civ 490, [2013] 2 All ER (Comm) 1222 the excessive length of court documents prompted:

"It is important that both practitioners and their clients understand that skeleton arguments are not intended to serve as vehicles for extended advocacy and that in general a short, concise skeleton is both more helpful to the court and more likely to be persuasive than a longer document which seeks to develop every point which the advocate would wish to make in oral argument."

No area of law is exempt from the requirement to produce careful and concise documents: *Tchenquiz v Director of the Serious Fraud Office* [2014] EWCA Civ 1333, [2015] 1 WLR 838, paragraph 10."

E Preparation of judgments: neutral citation

CPD XII General application E: PREPARATION OF JUDGMENTS: NEUTRAL CITATION

E.1 Since 11 January 2001 every judgment of the Court of Appeal, and of the Administrative Court, and since 14 January 2002 every judgment of the High Court, has been prepared and issued as approved with single spacing, paragraph numbering (in the margins) and no page numbers. In courts with more than one judge, the paragraph numbering continues sequentially through each judgment and does not start again at the beginning of each judgment. Indented paragraphs are not numbered. A unique reference number is given to each judgment. For judgments of the Court of Appeal, this number is given by the official shorthand writers, Merrill Legal Solutions (Tel: 020 7421 4000 ext.4036). For judgments of the High Court, it is provided by the Courts Recording and Transcription Unit at the Royal Courts of Justice. Such a number will also be furnished, on request to the Courts Recording and Transcription Unit, Royal Courts of Justice, Strand, London WC2A 2LL (Tel: 020 7947 7820), (e-mail: rcj.cratu@hmcts.gsi.gov.uk) for High Court judgments delivered outside London.

E.2 Each Court of Appeal judgment starts with the year, followed by EW (for England and Wales), then CA (for Court of Appeal), followed by Civ or Crim and finally the sequential number. For example, 'Smith v Jones [2001] EWCA Civ 10'.

E.3 In the High Court, represented by HC, the number comes before the divisional abbreviation and, unlike Court of Appeal judgments, the latter is bracketed: (Ch), (Pat), (QB), (Admin), (Comm), (Admlty), (TCC) or (Fam), as appropriate. For example, '[2002] EWHC 123 (Fam)', or '[2002] EWHC 124 (QB)', or '[2002] EWHC 125 (Ch)'.

E.4 This 'neutral citation', as it is called, is the official number attributed to the judgment and must always be used at least once when the judgment is cited in a later judgment. Once the judgment is reported, this neutral citation appears in front of the familiar citation from the law reports series. Thus: 'Smith v Jones [2001] EWCA Civ 10; [2001] QB 124; [2001] 2 All ER 364', etc.

E.5 Paragraph numbers are referred to in square brackets. When citing a paragraph from a High Court judgment, it is unnecessary to include the descriptive word in

brackets: (Admin), (QB), or whatever. When citing a paragraph from a Court of Appeal judgment, however, 'Civ' or 'Crim' is included. If it is desired to cite more than one paragraph of a judgment, each numbered paragraph should be enclosed with a square bracket. Thus paragraph 59 in Green v White [2002] EWHC 124 (QB) would be cited: 'Green v White [2002] EWHC 124 at [59]'; paragraphs 30 – 35 in Smith v Jones would be 'Smith v Jones [2001] EWCA Civ 10 at [30] – [35]'; similarly, where a number of paragraphs are cited: 'Smith v Jones [2001] EWCA Civ 10 at [30], [35] and [40 – 43]'.

E.6 If a judgment is cited more than once in a later judgment, it is helpful if only one abbreviation is used, e.g., 'Smith v Jones' or 'Smith's case', but preferably not both (in the same judgment).

F Citation of Hansard

CPD XII General application F: CITATION OF HANSARD

F.1 Where any party intends to refer to the reports of Parliamentary proceedings as reported in the Official Reports of either House of Parliament ("Hansard") in support of any such argument as is permitted by the decisions in *Pepper v Hart* [1993] AC 593 and *Pickstone v Freemans PLC* [1989] AC 66, or otherwise, he must, unless the court otherwise directs, serve upon all other parties and the court copies of any such extract, together with a brief summary of the argument intended to be based upon such extract. No other report of Parliamentary proceedings may be cited.

F.2 Unless the court otherwise directs, service of the extract and summary of the argument shall be effected not less than 5 clear working days before the first day of the hearing, whether or not it has a fixed date. Advocates must keep themselves informed as to the state of the lists where no fixed date has been given. Service on the court shall be effected by sending three copies to the Registrar of Criminal Appeals, Royal Courts of Justice, Strand, London, WC2A 2LL or to the court manager of the relevant Crown Court centre, as appropriate. If any party fails to do so, the court may make such order (relating to costs or otherwise) as is, in all the circumstances, appropriate.

XIII Listing

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION XIII

LISTING

A Judicial responsibility and key principles

CPD XIII Listing A: JUDICIAL RESPONSIBILITY FOR LISTING AND KEY PRINCIPLES

Listing as a judicial responsibility and function

A.1 Listing is a judicial responsibility and function. The purpose is to ensure that all cases are brought to a hearing or trial in accordance with the interests of justice, that the resources available for criminal justice are deployed as effectively as possible, and that cases are heard by an appropriate judge or bench with the minimum of delay.

A.2 The agreement reached between the Lord Chief Justice and the Secretary of State for Constitutional Affairs and Lord Chancellor set out in a statement to the House of Lords on 26 January 2004 ('the Concordat'), states that judges, working with HMCTS, are responsible for deciding on the assignment of cases to particular courts and the listing of those cases before particular judges. Therefore:

(a) The Presiding Judges of each circuit have the overall responsibility for listing at all courts, Crown and magistrates', on their circuit;
(b) Subject to the supervision of the Presiding Judges, the Resident Judge at each Crown Court has the general responsibility within his or her court centre for the allocation of criminal judicial work, to ensure the just and efficient despatch of the business of the court or group of courts. This includes overseeing the deployment of allocated judges at the court or group, including the distribution of work between all the judges allocated to that court. A Resident Judge must appoint a deputy or deputies to exercise his or her functions when he or she is absent from his or her court centre. See also paragraph A.5: Discharge of judicial responsibilities;
(c) The listing officer in the Crown Court is responsible for carrying out the day-to-day operation of listing practice under the direction of the Resident Judge. The listing officer at each Crown Court centre has one of the most important functions at that Crown Court and makes a vital contribution to the efficient running of that Crown Court and to the efficient operation of the administration of criminal justice;
(d) In the magistrates' courts, the Judicial Business Group, subject to the supervision of the Presiding Judges of the circuit, is responsible for determining the listing practice in that area. The day-to-day operation of that listing practice is the responsibility of the justices' clerk with the assistance of the listing officer.

Key principles of listing

A.3 When setting the listing practice, the Resident Judge or the Judicial Business Group should take into account principles a-j:

(a) Ensure the timely trial of cases and resolution of other issues (such as confiscation) so that justice is not delayed. The following factors are relevant:

i. In general, each case should be tried within as short a time of its arrival in the court as is consistent with the interests of justice, the needs of victims and witnesses, and with the proper and timely preparation by the prosecution and defence of their cases in accordance with the directions and timetable set;

ii. Priority should be accorded to the trial of young defendants, and cases where there are vulnerable or young witnesses. In *R v Barker* [2010] EWCA Crim 4, the Lord Chief Justice

highlighted "the importance to the trial and investigative process of keeping any delay in a case involving a child complainant to an irreducible minimum";

iii. Custody time limits (CTLs) should be observed, see CPD XIII Listing F;

iv. Every effort must be made to avoid delay in cases in which the defendant is on bail;

(b) Ensure that in the magistrates' court unless impracticable, non-custody anticipated guilty plea cases are listed 14 days after charge, and non-custody anticipated not guilty pleas are listed 28 days after charge;

(c) Provide, when possible, for certainty and/or as much advance notice as possible, of the trial date; and take all reasonable steps to ensure that the trial date remains fixed;

(d) Ensure that a judge or bench with any necessary authorisation and of appropriate experience is available to try each case and, wherever desirable and practicable, there is judicial continuity, including in relation to post-trial hearings;

(e) Strike an appropriate balance in the use of resources, by taking account of:

i. The efficient deployment of the judiciary in the Crown Court and the magistrates' courts taking into account relevant sitting requirements for magistrates. See CPD XIII Annex 1 for information to support judicial deployment in the magistrates' courts;
ii. The proper use of the courtrooms available at the court;
iii. The provision in long and/or complex cases for adequate reading time for the judiciary;
iv. The facilities in the available courtrooms, including the security needs (such as a secure dock), size and equipment, such as video and live link facilities;
v. The proper use of those who attend the Crown Court as jurors;
vi. The availability of legal advisers in the magistrates' courts;
vii. The need to return those sentenced to custody as soon as possible after the sentence is passed, and to facilitate the efficient operation of the prison escort contract;

(f) Provide where practicable:

i. the defendant and the prosecution with the advocate of their choice where this does not result in any delay to the trial of the case; and,
ii. for the efficient deployment of advocates, lawyers and associate prosecutors of the Crown Prosecution Service, and other prosecuting authorities, and of the resources available to the independent legal profession, for example by trying to group certain cases together;

(g) Meet the need for special security measures for category A and other high-risk defendants;

(h) Ensure that proper time (including judicial reading time) is afforded to hearings in which the court is exercising powers that impact on the rights of individuals, such as applications for investigative orders or warrants;

(i) Consider the significance of ancillary proceedings, such as confiscation hearings, and the need to deal with such hearings promptly and, where possible, for such hearings to be conducted by the trial judge;

(j) Provide for government initiatives or projects approved by the Lord Chief Justice.

A.4 Although the listing practice at each Crown Court centre and magistrates' court will take these principles into account, the listing practice adopted will vary from court to court depending particularly on the number of courtrooms and the facilities available, the location and the workload, its volume and type.

Discharge of judicial responsibilities

A.5 The Resident Judge of each court is responsible for:

i. ensuring that good practice is implemented throughout the court, such that all hearings commence on time;
ii. ensuring that the causes of trials that do not proceed on the date originally fixed are examined to see if there is any systemic issue;
iii. monitoring the general performance of the court and the listing practices;
iv. monitoring the timeliness of cases and reporting any cases of serious concern to the Presiding Judge;
v. maintaining and reviewing annually a list of Recorders, qualifying judge advocates, Deputy Circuit Judges, and Deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 1981 authorised to hear appeals from the magistrates' courts unless such a list is maintained by the Presiding Judge.

A.6 The Judicial Business Group for each clerkship subject to the overall jurisdiction of the Presiding Judge is responsible for:

i. monitoring the workload and anticipated changes which may impact on listing policies;
ii. ensuring that any listing practice meets the needs of the system as a whole.

B Classification

CPD XIII Listing B: CLASSIFICATION

B.1 The classification structure outlined below is solely for the purposes of trial in the Crown Court. The structure has been devised to accommodate practical administrative functions and is not intended to reflect a hierarchy of the offences therein.

Offences are classified as follows:

Class 1: A:

i. Murder;
ii. Attempted Murder;
iii. Manslaughter;
iv. Infanticide;
v. Child destruction (section 1(1) of the Infant Life (Preservation) Act 1929;
vi. Abortion (section 58 of the Offences Against the Person Act 1861);
vii. Assisting a suicide;
viii. Cases including section 5 of the Domestic Violence, Crime and Victims Act 2004, as amended (if a fatality has resulted);
ix. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 1: B:

i. Genocide;
ii. Torture, hostage-taking and offences under the War Crimes Act 1991;
iii. Offences under ss.51 and 52 International Criminal Courts Act 2001;
iv. An offence under section 1 of the Geneva Conventions Act 1957;
v. Terrorism offences (where offence charged is indictable only and took place during an act of terrorism or for the purposes of terrorism as defined in s.1 of the Terrorism Act 2000);
vi. Piracy, under the Merchant Shipping and Maritime Security Act 1997;
vii. Treason;
viii. An offence under the Official Secrets Acts;
ix. Incitement to disaffection;
x. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 1: C:

i. Prison mutiny, under the Prison Security Act 1992;
ii. Riot in the course of serious civil disturbance;
iii. Serious gang related crime resulting in the possession or discharge of firearms, particularly including a campaign of firebombing or extortion, especially when accompanied by allegations of drug trafficking on a commercial scale;
iv. Complex sexual offence cases in which there are many complainants (often under age, in care or otherwise particularly vulnerable) and/or many defendants who are alleged to have systematically groomed and abused them, often over a long period of time;

v. Cases involving people trafficking for sexual, labour or other exploitation and cases of human servitude;
vi. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 1: D:

i. Causing death by dangerous driving;
ii. Causing death by careless driving;
iii. Causing death by unlicensed, disqualified or uninsured driving;
iv. Any Health and Safety case resulting in a fatality or permanent serious disability;
v. Any other case resulting in a fatality or permanent serious disability;
vi. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 2: A

i. Arson with intent to endanger life or reckless as to whether life was endangered;
ii. Cases in which explosives, firearms or imitation firearms are used or carried or possessed;
iii. Kidnapping or false imprisonment (without intention to commit a sexual offence but charged on the same indictment as a serious offence of violence such as under section 18 or section 20 of the Offences Against the Person Act 1861);
iv. Cases in which the defendant is a police officer, member of the legal profession or a high profile or public figure;
v. Cases in which the complainant or an important witness is a high profile or public figure;
vi. Riot otherwise than in the course of serious civil disturbance;
vii. Child cruelty;
viii. Cases including section 5 of the Domestic Violence, Crime and Victims Act 2004, as amended (if no fatality has resulted);
ix. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 2: B

i. Any sexual offence, with the exception of those included in Class 1C;
ii. Kidnapping or false imprisonment (with intention to commit a sexual offence or charged on the same indictment as a sexual offence);
iii. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 2: C:

i. Serious, complex fraud;
ii. Serious and/or complex money laundering;
iii. Serious and/or complex bribery;
iv. Corruption;
v. Complex cases in which the defendant is a corporation (including cases for sentence as well as for trial);
vi. Any case in which the defendant is a corporation with a turnover in excess of £1bn (including cases for sentence as well as for trial);
vii. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

Class 3: All other offences not listed in the classes above.

Deferred Prosecution Agreements

B.2 Cases coming before the court under section 45 and Schedule 17 of the Crime and Courts Act 2013 must be referred to the President of the Queen's Bench Division who will allocate the matter to a judge from a list of judges approved by the Lord Chief Justice. Only the allocated judge may thereafter hear any matter or make any decision in relation to that case.

Criminal Cases Review Commission

B.3 Where the CCRC refers a case upon conviction from the magistrates' courts to the Crown Court, this shall be dealt with at a Crown Court centre designated by the Senior Presiding Judge.

C Referral of cases in the Crown Court to the Resident Judge and to the President Judges

CPD XIII Listing C: REFERRAL OF CASES IN THE CROWN COURT TO THE RESIDENT JUDGE AND TO THE PRESIDING JUDGES

C.1 This Practice Direction specifies:

(a) cases which must be referred to a Presiding Judge for release; and

(b) cases which must be referred to the Resident Judge before being assigned to a judge, Recorder, qualifying judge advocate, Deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 1981, or District Judge (Magistrates' Courts) to hear.

It is applicable to all Crown Courts, but its application may be modified by the Senior Presiding Judge or the Presiding Judges, with the approval of the Senior Presiding Judge, through the provision of further specific guidance to Resident Judges in relation to the allocation and management of the work at their court.

C.2 This Practice Direction does not prescribe the way in which the Resident Judge gives directions as to listing policy to the listing officer; its purpose is to ensure that there is appropriate judicial control over the listing of

cases. However, the Resident Judge must arrange with the listing officers a satisfactory means of ensuring that all cases listed at their court are listed before judges, Recorders, qualifying judge advocates, Deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 1981, or District Judges (Magistrates' Courts) of suitable seniority and experience, subject to the requirements of this Practice Direction. The Resident Judge should ensure that listing officers are made aware of the contents and importance of this Practice Direction, and that listing officers develop satisfactory procedures for referral of cases to him or her.

C.3 In order to assist the Resident Judge and the listing officer, all cases sent to the Crown Court should where possible include a brief case summary prepared by the prosecution. The prosecutor should ensure that any factors that make the case complex, or would lead it to be referred to the Resident Judge or a Presiding Judge are highlighted. The defence may also send submissions to the court, again highlighting any areas of complexity or any other factors that might assist in the case being allocated to an appropriate judge.

Cases in the Crown Court to be referred to the Resident Judge

C.4 All cases in Class 1A, 1B, 1C, 1D, 2A and 2C must be referred to the Resident Judge as must any case which appears to raise particularly complex, sensitive or serious issues.

C.5 Resident Judges should give guidance to the judges and staff of their respective courts as to which Class 2B cases should be referred to them following consultation with the Senior Presiding Judge. This will include any cases that may be referred to the Presiding Judge, see below. Class 2B cases to be referred to the Resident Judge are likely to be identified by the list officer, or by the judge at the first hearing in the Crown Court. Any appeal against conviction and/or sentence from a Youth Court involving a Class 2B case must be bought to the attention of the Resident Judge as soon as practicable. Where not provided with the appeal papers, the list officer must obtain a full summary of the prosecution case so as to allow an informed allocation decision to be made.

C.6 Once a case has been referred to the Resident Judge, the Resident Judge should refer the case to the Presiding Judge, following the guidance below, or allocate the case to an appropriate category of judge, and if possible to a named judge.

Cases in the Crown Court to be referred to a Presiding Judge

C.7 All cases in Class 1A, 1B and 1C must be referred by the Resident Judge to a Presiding Judge, as must a case in any class which is:

i. An usually grave or complex case or one in which a novel and important point of law is to be raised;

ii. A case where it is alleged that the defendant caused more than one fatality;

iii. A non-fatal case of baby shaking where serious injury resulted;

iv. A case where the defendant is a police officer, or a member of the legal profession or a high profile figure;

v. A case which for any reason is likely to attract exceptional media attention;

vi. A case where a large organisation or corporation may, if convicted, be ordered to pay a very large fine;

vii. Any case likely to last more than three months.

C.8 Resident Judges are encouraged to refer any other case if they think it is appropriate to do so.

C.9 Presiding Judges and Resident Judges should agree a system for the referral of cases to the Presiding Judge, ideally by electronic means. The system agreed should include provision for the Resident Judge to provide the Presiding Judge with a brief summary of the case, a clear recommendation by the Resident Judge about the judges available to try the case and any other comments. A written record of the decision and brief reasons for it must be made and retained.

C.10 Once a case has been referred to the Presiding Judge, the Presiding Judge may retain the case for trial by a High Court Judge, or release the case back to the Resident Judge, either for trial by a named judge, or for trial by an identified category of judges, to be allocated by the Resident Judge.

D Authorisation of Judges

CPD XIII Listing D: AUTHORISATION OF JUDGES

D.1 Judges must be authorised by the Lord Chief Justice before they may hear certain types of case.

D.2 Judges (other than High Court Judges) to hear Class 1A cases must be authorised to hear such cases. Any judge previously granted a 'Class 1' or 'murder' authorisation is authorised to hear Class 1A cases. Judges previously granted an 'attempted murder' (including soliciting, incitement or conspiracy thereof) authorisation can only deal with these cases within Class 1A.

D.3 Judges (other than High Court Judges) to hear sexual offences cases in Class 1C or any case within Class 2B must be authorised to hear such cases. Any judge previously granted a 'Class 2' or 'serious sex offences' authorisation is authorised to hear sexual offences cases in Class 1C or 2B. It is a condition of the authorisation that it does not take effect until the judge has attended the relevant Judicial College course; the Resident Judge should check in the case of newly authorised judges that they have attended the course. Judges who have been previously authorised to try such cases should make every effort to ensure their training is up-to-date and maintained by attending the Serious Sexual Offences Seminar at least once every three years. See

CPD XIII Annex 2 for guidance in dealing with sexual offences in the youth court.

D.4 Cases in the magistrates' courts involving the imposition of very large fines

i. Where a defendant appears before a magistrates' court for an either way offence, to which CPD XIII Annex 3 applies the case must be dealt with by a DJ (MC) who has been authorised to deal with such cases by the Chief Magistrate.

ii. The authorised DJ (MC) must first consider whether such cases should be allocated to the Crown Court or, where the defendant pleads guilty, committed for sentence under s.3 Powers of Courts (Sentence) Act 2000, and must do so when the DJ (MC) considers the offence or combination of offences so serious that the Crown Court should deal with the defendant had they been convicted on indictment.

iii. If an authorised DJ (MC) decides not to commit such a case the reasons must be recorded in writing to be entered onto the court register.

E Allocation of business within the Crown Court

CPD XIII Listing E: ALLOCATION OF BUSINESS WITHIN THE CROWN COURT

E.1 Cases in Class 1A may only be tried by:

i. a High Court Judge, or
ii. a Circuit Judge, authorised to try such cases and provided that the Presiding Judge has released the case for trial by such a judge; or
iii. a Deputy Circuit Judge to whom the case has been specifically released by the Presiding Judge.

E.2 Cases in Class 1B may only be tried by:

i. a High Court Judge, or
ii. a Circuit Judge, provided that the Presiding Judge has released the case for trial by such a judge; or
iii. a Deputy Circuit Judge to whom the case has been specifically released by the Presiding Judge.

E.3 Cases in Class 1C may only be tried by:

i. a High Court Judge, or
ii. a Circuit Judge, or Deputy Circuit Judge, authorised to try such cases (if the case requires the judge to be authorised to hear sexual offences cases), provided that the Presiding Judge has released the case for trial by such a judge, or, if the case is a sexual offence, the Presiding Judge has assigned the case to that named judge.

See also CPD XIII Listing C.10

E.4 Cases in Class 1D and 2A may be tried by:

i. a High Court Judge, or

ii. a Circuit Judge, or Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981, or Deputy Circuit Judge, or a Recorder, or a qualifying judge advocate, or a District Judge (Magistrates' Courts), provided that either the Presiding Judge has released the case or the Resident Judge has allocated the case for trial by such a judge; with the exception that Class 2A i) cases may not be tried by a Recorder, qualifying judge advocate, Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981, or District Judge (Magistrates' Courts).

E.5 Cases in Class 2B may be tried by:

i. a High Court Judge, or

ii. a Circuit Judge, or Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981, or Deputy Circuit Judge, or a Recorder, or a qualifying judge advocate, or a District Judge (Magistrates' Courts), authorised to try such cases and provided that either the Presiding Judge has released the case or the Resident Judge has allocated the case for trial by such a judge.

E.6 Cases in Class 2C may be tried by:

i. a High Court Judge, or

ii. a Circuit Judge, or Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981, or Deputy Circuit Judge, or a Recorder, or a qualifying judge advocate, or a District Judge (Magistrates' Courts), with suitable experience (for example, with company accounts or other financial information) and provided that either the Presiding Judge has released the case or the Resident Judge has allocated the case for trial by such a judge.

E.7 Cases in Classes 1D, 2A and 2C will usually be tried by a Circuit Judge.

E.8 Cases in Class 3 may be tried by a High Court Judge, or a Circuit Judge, a Deputy Circuit Judge, a Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981, a Recorder, a qualifying judge advocate, or a District Judge (Magistrates' Courts). A case in Class 3 shall not be listed for trial by a High Court Judge except with the consent of a Presiding Judge.

E.9 If a case has been allocated to a judge, Recorder, qualifying judge advocate, Deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 1981, or District Judge (Magistrates' Courts), the preliminary hearing should be conducted by the allocated judge if practicable, and if not, if possible by a judge of at least equivalent standing. PTPHs should only be heard by Recorders or qualifying judge advocates or Deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 1981,

or a District Judge (Magistrates' Courts) with the approval of the Resident Judge.

E.10 For cases in Class 1A, 1B or 1C, or any case that has been referred to the Presiding Judge, the preliminary hearing and PTPH must be conducted by a High Court Judge; by a Circuit Judge; or by a judge authorised by the Presiding Judges to conduct such hearings. In the event of a guilty plea before such an authorised judge, the case will be adjourned for sentencing and will immediately be referred to the Presiding Judge who may retain the case for sentence by a High Court Judge, or release the case back to the Resident Judge, either for sentence by a named judge, or for sentence by an identified category of judges, to be allocated by the Resident Judge.

E.11 Appeals from decisions of magistrates' courts shall be heard by:

i. a Resident Judge, or
ii. a Circuit Judge, nominated by the Resident Judge, or
iii. a Recorder or qualifying judge advocate or a Deputy Circuit Judge, or a Deputy Circuit Judge, or a Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981, listed by the Presiding Judge to hear such appeals; or, if there is no such list nominated by the Resident Judge to hear such appeals;
iv. and, no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal;
v. where no Circuit Judge or Recorder or qualifying judge advocate or a Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981 satisfying the requirements above is available, by a Circuit Judge, Recorder, qualifying judge advocate, Deputy Circuit Judge, or Deputy High Court Judge appointed under section 9(4) of the Senior Courts Act 1981 selected by the Resident Judge to hear a specific case or cases listed on a specific day.

E.12 Appeals from the youth court in relation to sexual offences shall be heard by:

i. A Resident Judge or;
ii. a Circuit Judge nominated by the Resident Judge who is authorised under D.3 to hear sexual offences in Class 1C or Class 2B;
iii. and no less than two and no more than four justices of the peace, none of whom took part in the decision under appeal. The justices of the peace must have undertaken specific training to deal with youth matters.
iv. No appeal against conviction and/or sentence from a Youth Court involving a Class 1C or Class 2B offence shall be heard by a Recorder save with the express permission of the Presiding Judge of the Circuit.

E.13 Allocation or committal for sentence following breach (such as a matter in which a community order has been made, or a suspended sentence passed), should, where possible, be listed before the judge who originally dealt with the matter or, if not, before a judge of the same or higher level.

E.14 Applications for removal of a driving disqualification should be made to the location of the Crown Court where the order of disqualification was made. Where possible, the matter should be listed before the judge who originally dealt with the matter or, if not, before a judge of the same or higher level.

F Listing of trials, Custody Time Limits and transfer of cases

CPD XIII Listing F: LISTING OF TRIALS, CUSTODY TIME LIMITS AND TRANSFER OF CASES

Estimates of trial length

F.1 Under the regime set out in the Criminal Procedure Rules, the parties will be expected to provide an accurate estimate of the length of trial at the hearing where the case is to be managed based on a detailed estimate of the time to be taken with each witness to be called, and accurate information about the availability of witnesses.

F.2 At the hearing the judge will ask the prosecution to clarify any custody time limit ('CTL') dates. The court clerk must ensure the CTL date is marked clearly on the court file or electronic file. When a case is subject to a CTL all efforts must be made at the first hearing to list the case within the CTL and the judge should seek to ensure this. Further guidance on listing CTL cases can be found below.

Cases that should usually have fixed trial dates

F.3 The cases where fixtures should be given will be set out in the listing practice applicable at the court, but should usually include the following:

i. Cases in classes 1A, 1B, 1C, 2B and 2C;

ii. Cases involving vulnerable and intimidated witnesses (including domestic violence cases), whether or not special measures have been ordered by the court;

iii. Cases where the witnesses are under 18 or have to come from overseas;

iv. Cases estimated to last more than a certain time – the period chosen will depend on the size of the centre and the available judges;

v. Cases where a previous fixed hearing has not been effective;

vi. Re-trials; and,

vii. Cases involving expert witnesses.

Custody Time Limits

F.4 Every effort must be made to list cases for trial within the CTL limits set by Parliament. The guiding principles are:

i. At the first hearing in the Crown Court, prosecution will inform the court when the CTL lapses.

ii. All efforts must be made to list the case within the CTL. The CTL may only be extended in accordance with *s.22 Prosecution of Offences Act 1985* and the *Prosecution of Offences (Custody Time Limits) Regulations 1987.*

iii. If suitable, given priority and listed on a date not less than 2 weeks before the CTL expires, the case may be placed in a warned list.

iv. The CTL must be kept under continual review by the parties, HMCTS and the Resident Judge.

v. If the CTL is at risk of being exceeded, an additional hearing should take place and should be listed before the Resident Judge or trial judge or other judge nominated by the Resident Judge.

vi. An application to extend the CTL in any case listed outside the CTL must be considered by the court whether or not it was listed with the express consent of the defence.

vii. Any application to extend CTLs must be considered as a matter of urgency. The reasons for needing the extension must be ascertained and fully explained to the court.

viii. Where courtroom or judge availability is an issue, the court must itself list the case to consider the extension of any CTL. The Delivery Director of the circuit must provide a statement setting out in detail what has been done to try to accommodate the case within the CTL.

ix. Where courtroom or judge availability is not in issue, but all parties and the court agree that the case will not be ready for trial before the expiration of the CTL, a date may be fixed outside the CTL. This may be done without prejudice to any application to extend the CTLs or with the express consent of the defence; this must be noted on the papers.

F.5 As legal argument may delay the swearing in of a jury, it is desirable to extend the CTL to a date later than the first day of the trial.

Re-trials ordered by the Court of Appeal

F.6 The Crown Court must comply with the directions of the Court of Appeal and cannot vary those directions without reference to the Court of Appeal.

F.7 In cases where a retrial is ordered by the Court of Appeal the CTL is 112 days starting from the date that the new indictment is preferred i.e. from the date that the indictment is delivered to the Crown Court. Court centres should check that CREST has calculated the dates correctly and that it has not used 182 days on cases that have previously been 'sent'.

Changes to the date of fixed cases

F.8 Once a trial date or window is fixed, it should not be vacated or moved without good reason. Under the Criminal Procedure Rules, parties are expected to be ready by the trial date.

F.9 The listing officer may, in circumstances determined by the Resident Judge, agree to the movement of the trial to a date to which the defence and prosecution both consent, provided the timely hearing of the case is not delayed. The prosecution will be expected to have consulted the witnesses before agreeing to any change.

F.10 In all other circumstances, requests to adjourn or vacate fixtures or trial windows must be referred to the Resident Judge for his or her personal attention; the Resident Judge may delegate the decision to a named deputy.

Transferring cases to another court

F.11 Transfer between courts on the same circuit must be agreed by the Resident Judges of each court, subject to guidance from the Presiding Judges of the circuit.

F.12 Transfer of trials between circuits must be agreed between the Presiding Judges and Delivery Directors of the respective circuits.

F.13 Transfers may be agreed either in specific cases or in accordance with general principles agreed between those cited above.

G Listing of hearings other than trials

CPD XIII Listing G: LISTING OF HEARINGS OTHER THAN TRIALS

G.1 In addition to trials, the court's listing practice will have to provide court time for shorter matters, such as those listed below. These hearings are important, often either for setting the necessary case management framework for the proper and efficient preparation of cases for trial, or for determining matters that affect the rights of individuals. They must be afforded the appropriate level of resource that they require to be considered properly, and this may include judicial reading time as well as an appropriate length of hearing.

G.2 The applicant is responsible for notifying the court, and the other party if appropriate, and ensuring that the papers are served in good time, including a time estimate for judicial reading time and for the hearing. The applicant must endeavour to complete the application within the time estimate provided unless there are exceptional circumstances.

G.3 Hearings other than trials include the following:

i. Applications for search warrants and Production Orders, sufficient reading time must be provided, see G.8 below;
ii. Bail applications;
iii. Applications to vacate or adjourn hearings;
iv. Applications for dismissal of charges;
v. Preparation for trial hearings, plea and trial preparation hearings, and other pre-trial case management hearings;

vi. Applications for disclosure of further unused material under section 8 of CPIA 1996;
vii. Case progression or case management hearings;
viii. Applications in respect of sentence indications not sought at the PTPH;
ix. Sentences;
x. Civil applications under the Anti-Social Behaviour, Crime and Policing Act 2014;
xi. Breach proceedings (and see paragraph G.12 beneath);
xii. Appeals from the magistrates' court: it is essential in all cases where witnesses are likely to be needed on the appeal to check availability before a date is fixed (and see paragraphs G.13 to G.15 beneath);
xiii. Appeals from the youth court: where the case involves a Class 2B offence then a directions hearing will be required before the re-hearing to consider special measures, ground rules and appropriate adjustments for the hearing of the trial.

G.4 Short hearings should not generally be listed before a judge such that they may delay the start or continuation of a trial at the Crown Court. It is envisaged that any such short hearing will be completed by 10.30am or start after 4.30pm.

G.5 Each Crown Court equipped with a video link with a prison must have in place arrangements for the conduct of PCMHs, other pre-trial hearings and sentencing hearings by video link.

Notifying sureties of hearing dates

G.6 Where a surety has entered into a recognizance in the magistrates' court in respect of a case allocated or sent to the Crown Court and where the bail order or recognizance refers to attendance at the first hearing in the Crown Court, the defendant should be reminded by the listing officer that the surety should attend the first hearing in the Crown Court in order to provide further recognizance. If attendance is not arranged, the defendant may be remanded in custody pending the recognisance being provided.

G.7 The Court should also notify sureties of the dates of the hearing at the Crown Court at which the defendant is ordered to appear in as far in advance as possible: see the observations of Parker LJ in *R v Crown Court at Reading ex p. Bello* [1992] 3 All ER 353.

Applications for Production Orders and Search Warrants

G.8 The use of production orders and search warrants involve the use of intrusive state powers that affect the rights and liberties of individuals. It is the responsibility of the court to ensure that those powers are not abused. To do so, the court must be presented with a properly completed application, on the

appropriate form, which includes a summary of the investigation to provide the context for the order, a clear explanation of how the statutory requirements are fulfilled, and full and frank disclosure of anything that might undermine the basis for the application. Further directions on the proper making and consideration of such applications will be provided by Practice Direction. However, the complexity of the application must be taken into account in listing it such that the judge is afforded appropriate reading time and the hearing is given sufficient time for the issues to be considered thoroughly, and a short judgment given.

Confiscation and Related Hearings

G.9 Applications for restraint orders should be determined by the Resident Judge, or a judge nominated by the Resident Judge, at the Crown Court location at which they are lodged.

G.10 In order to prevent possible dissipation of assets of significant value, applications under the Proceeds of Crime Act 2002 should be considered urgent when lists are being fixed. In order to prevent potential prejudice, applications for the variation and discharge of orders, for the appointment of receivers, and applications to punish alleged breaches of orders as a contempt of court should similarly be treated as urgent and listed expeditiously.

Confiscation Hearings

G.11 It is important that confiscation hearings take place in good time after the defendant is convicted or sentenced.

Breach proceedings

G.12 As a general rule, proceedings to which CrimPR Part 32 applies (breach of community and other orders) should be brought in the court, and in case of the Crown Court at the Crown Court centre, at which the sentence was imposed, or in the magistrates' court at which the breach of a Crown Court order ordinarily would be dealt with. An exception to that general rule should be made, however, to reflect the application of CrimPR Part 1, the overriding objective, and the key listing principles at A above, where the defendant's home is significantly closer to another court with jurisdiction to determine the proceedings, in which case those proceedings should be brought in that court. If the court in which the breach proceedings are brought was not the sentencing court, or the magistrates' court for the Crown Court centre at which the sentence was passed, then the authority by which the proceedings are instituted must explain the reasons for choosing it. Any dispute over the proper venue for should be determined by the relevant Presiding Judges.

Appeals from magistrates' courts

G.13 As a general rule, the hearing in the Crown Court of an appeal to which CrimPR Part 34 applies (appeal against conviction or sentence from a magistrates' court) should take place at the Crown Court centre to which that magistrates' court

ordinarily sends cases for trial or commits for sentence. This general rule applies irrespective of the location of the magistrates' court at which the case first began, if that was not the court at which the defendant was convicted, or sentenced, or both, because the reasons that led to the case being dealt with at a different magistrates' court may apply equally to the hearing of the appeal.

G.14 There are two exceptions to that general rule, however, each of which reflects the application of CrimPR Part 1, the overriding objective, and the key listing principles at A above. First, if on an appeal against conviction witnesses are required to give evidence in person then the appeal should be heard at the Crown Court centre which is the most conveniently situated for the majority of those witnesses. This exception is likely to apply where the defendant's conviction and sentence have been imposed at a magistrates' court distant from the place at which the offence occurred, perhaps because the defendant had failed to attend a hearing at the court for that area and subsequently was arrested for breach of bail and convicted and sentenced at another court. The information required of the parties to the appeal by CrimPR 34.3 and by the associated appeal forms will be essential to determining the most appropriate venue for the appeal. Second, where the appeal is against sentence only, or if, exceptionally, on an appeal against conviction no witnesses are required to give evidence in person, then then the appeal should be heard at the Crown Court centre which is the closest to the defendant's home. This exception is likely to apply where the defendant has been convicted and sentenced at a magistrates' court for the area in which the offence occurred but at a distance from the defendant's usual or present residence. This exception must not, however, be allowed to operate to the disadvantage of any victim of the offence who is expected to attend the sentencing in the Crown Court.

G.15 Once an appeal is submitted to the Crown Court, arrangements for its hearing, at that or at another Crown Court centre if appropriate, must be made by Crown Court staff under the direction of the Resident judge or Resident judges concerned. Any dispute over the proper venue for the appeal should be determined by the relevant Presiding Judges.

Annex 1 General Principles for the deployment of the judiciary in the magistrates' court

CPD XIII Annex 1:
GENERAL PRINCIPLES FOR THE DEPLOYMENT OF THE JUDICIARY IN THE MAGISTRATES' COURT

This distils the full deployment guidance issued in November 2012. The relevant sections dealing specifically with the allocation of work within the magistrates' court have been incorporated into this Practice Direction. It does not seek to replace the guidance in its entirety.

PRESUMPTIONS

1. The presumptions which follow are intended to provide an acceptable and flexible framework establishing the deployment of the DJ (MC)s and magistrates. The system

must be capable of adaptation to meet particular needs, whether of locality or caseload. In any event, the presumptions which follow are illustrative not exhaustive.

2. DJ(MC)s should generally (not invariably) be deployed in accordance with the following presumptions ("the Presumptions"):

(a) Cases involving complex points of law and evidence.

(b) Cases involving complex procedural issues.

(c) Long cases (included on grounds of practicality).

(d) Interlinked cases (given the need for consistency, together with their likely complexity and novelty).

(e) Cases for which armed police officers are required in court, such as high end firearms cases.

(f) A share of the more routine business of the Court, including case management and pre-trial reviews, (for a variety of reasons, including the need for DJ(MC)s to have competence in all areas of work and the desirability of an equitable division of work between magistrates and DJ(MC)s, subject always to the interests of the administration of justice).

(g) Where appropriate, in supporting the training of magistrates.

(h) Occasionally, in mixed benches of DJ(MC)s and magistrates (with a particular view both to improving the case management skills of magistrates and to improving the culture of collegiality).

(i) In the short term tackling of particular local backlogs ("backlog busting"), some times in combination with magistrates from the local or (with the SPJ's approval) adjoining benches.

3. In accordance with current arrangements certain classes of cases necessarily require DJ(MC)s and have therefore been excluded from the above presumptions; these are as follows:

(a) Extradition;

(b) Terrorism;

(c) Prison Adjudications;

(d) Sex cases in the Youth Court as per Annex 2;

(e) Cases where the defendant is likely to be sentenced to a very large fine, see Annex 3;

(d) The Special Jurisdiction of the Chief Magistrate.

4. In formulating the Presumptions, the following considerations have been taken into account:

(a) The listing of cases is here, as elsewhere, a judicial function, see CPD XIII A.1. In the magistrates' courts the Judicial Business Group, subject to the

supervision of the Presiding Judges of the circuit, is responsible for determining the day to day listing practice in that area. The day-to-day operation of that listing practice is the responsibility of the justices' clerk with the assistance of the listing officer.

(b) Equally, providing the training of magistrates is a responsibility of justices' clerks.

(c) It is best not to treat "high profile" cases as a separate category but to consider their listing in the light of the principles and presumptions. The circumstances surrounding high profile cases do not permit ready generalisation, save that they are likely to require especially sensitive handling. Listing decisions involving such cases will often benefit from good communication at a local level between the justices' clerk, the DJ (MC) and the Bench Chairman.

(d) Account must be taken of the need to maintain the competences of all members of the judiciary sitting in the magistrates' court.

5. The Special Jurisdiction of the Senior District Judge (Chief Magistrate) concerns cases which fall into the following categories:

i. cases with a terrorism connection;
ii. cases involving war crimes and crimes against humanity;
iii. matters affecting state security;
iv. cases brought under the Official Secrets Act;
v. offences involving royalty or parliament;
vi. offences involving diplomats;
vii. corruption of public officials;
viii. police officers charged with serious offences;
ix. cases of unusual sensitivity.

6. Where cases fall within the category of the Special Jurisdiction they must be heard by:-

i. the Senior District Judge (or if not available);
ii. the Deputy Senior District Judge (or if not available);
iii. a District Judge approved by the Senior District Judge or his/her deputy for the particular case.

7. Where a doubt may exist as to whether or not a case falls within the Special Jurisdiction, reference should always be made to the Senior District Judge or to the Deputy Senior District Judge for clarification.

Annex 2 Sexual offences in the youth court

CPD XIII Annex 2

SEXUAL OFFENCES IN THE YOUTH COURT

1. This annex sets out the procedure to be applied in the Youth Court in all cases involving allegations of sexual offences which are capable of being sent for trial at the Crown Court under the grave crime provisions.

2. This applies to all cases involving such charges, irrespective of the gravity of the allegation, the age of the defendant and / or the antecedent history of the defendant[7].

3. This does not alter the test[8] that the Youth Court must apply when determining whether a case is a "grave crime".

4. In the Crown Court, cases involving allegations of sexual offences frequently involve complex and sensitive issues and only those Circuit Judges and Recorders who have been specifically authorised and who have attended the appropriate Judicial College course may try this type of work.

5. A number of District Judges (Magistrates' Courts) have now undertaken training in dealing with these difficult cases and have been specifically authorised to hear cases involving serious sexual offences which fall short of requiring to be sent to the Crown Court ("an authorised DJ (MC)"). As such, a procedure similar to that of the Crown Court will now apply to allegations of sexual offences in the Youth Court.

Procedure

6. The determination of venue in the Youth Court is governed by section 51 Crime and Disorder Act 1998, which provides that the youth must be tried summarily unless charged with such a grave crime that long term detention is a realistic possibility[9], or that one of the other exceptions to this presumption arises.

7. Wherever possible such cases should be listed before an authorised DJ (MC), to decide whether the case falls within the grave crime provisions and should therefore be sent for trial. If jurisdiction is retained and the allegation involves actual, or attempted, penetrative activity, the case must be tried by an authorised DJ (MC). In all other cases, the authorised DJ (MC) must consider whether the case is so serious and / or complex that it must be tried by an authorised DJ (MC), or whether the case can be heard by any DJ (MC) or any Youth Court Bench.

8. If it is not practicable for an authorised DJ(MC) to determine venue, any DJ(MC) or any Youth Court Bench may consider that issue. If jurisdiction is retained, appropriate directions may be given but the case papers, including a detailed case summary and a note of any representations made by the parties, must be sent to an authorised DJ(MC) to consider. As soon as possible the authorised DJ(MC) must decide whether the case must be tried by an authorised DJ(MC) or whether the case is suitable to be heard by any DJ(MC) or any Youth Court Bench; however, if the case involves actual, or alleged, penetrative activity, the trial must be heard by an authorised DJ(MC).

([7]) So, for example, every allegation of sexual touching, under s3 of the Sexual Offences Act 2003, is covered by this protocol.

([8]) Set out in the Sentencing Guidelines Council's definitive guideline, entitled "Overarching Principles – Sentencing Youths" Published by the Sentencing Guidelines Council in November 2009.

([9]) Section 24(1) of the Magistrates Court Act 1980

9. Once an authorised DJ(MC) has decided that the case is one which must be tried by an authorised DJ(MC), and in all cases involving actual or alleged penetrative activity, all further procedural hearings should, so far as practicable, be heard by an authorised DJ(MC).

Cases remitted for sentence

10. All cases which are remitted for sentence from the Crown Court to the Youth Court should be listed for sentence before an authorised DJ(MC).

Arrangements for an authorised DJ(MC) to be appointed

11. Where a case is to be tried by an authorised DJ(MC) but no such Judge is available, the Bench Legal Adviser should contact the Chief Magistrates Office for an authorised DJ(MC) to be assigned.

Annex 3 Cases involving very large fines in the magistrates' courts

CPD XIII Annex 3

CASES INVOLVING VERY LARGE FINES IN THE MAGISTRATES' COURT

1. This Annex applies when s.85 Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force and the magistrates' court has the power to impose a maximum fine of any amount.

2. An authorised DJ (MC) must deal with any allocation decision, trial and sentencing hearing in the following types of cases which are triable either way:
    a) Cases involving death or significant, life changing injury or a high risk of death or significant, life-changing injury;
    b) Cases involving substantial environmental damage or polluting material of a dangerous nature;
    c) Cases where major adverse effect on human health or quality of life, animal health or flora has resulted;
    d) Cases where major costs through clean up, site restoration or animal rehabilitation have been incurred;
    e) Cases where the defendant corporation has a turnover in excess of £10 million but does not exceed £250 million, and has acted in a deliberate, reckless or negligent manner;
    f) Cases where the defendant corporation has a turnover in excess of £250 million;
    g) Cases where the court will be expected to analyse complex company accounts;
    h) High profile cases or ones of an exceptionally sensitive nature.

3. The prosecution agency must notify the justices' clerk where practicable of any case of the type mentioned in paragraph 2 of this Annex, no less than 7 days before the first hearing to ensure that an authorised DJ (MC) is available at the first hearing.

4. The justices' clerk shall contact the Office of the Chief Magistrate to ensure that an authorised DJ (MC) can be assigned to deal with such a case if there is not such a person available in the courthouse.

5. Where an authorised DJ (MC) is not appointed at the first hearing the court shall adjourn the case. The court shall ask the accused for an indication of his plea, but shall not allocate the case nor, if the accused indicates a guilty plea, sentence him, commit him for sentence, ask for a pre-sentence report or give any indication as to likely sentence that will be imposed. The justices' clerk shall ensure an authorised DJ (MC) is appointed for the following hearing.

6. When dealing with sentence, section 3 of the Powers of Criminal Courts (Sentence) Act 2000 can be invoked where, despite the magistrates' court having maximum fine powers available to it, the offence or combination of offences make it so serious that the Crown Court should deal with it as though the person had been convicted on indictment.

7. An authorised DJ (MC) should consider allocating the case to the Crown Court or committing the accused for sentence.

Annex 4 Case management of terrorism cases

CPD XIII Annex 4

This annex replaces the Protocol on the case management of Terrorism Cases issued in December 2006 by the President of the Queen's Bench Division.

APPLICATION

1. This annex applies to 'terrorism cases'. For the purposes of this annex a case is a 'terrorism case' where:

   (a) one of the offences charged against any of the defendants is indictable only and it is alleged by the prosecution that there is evidence that it took place during an act of terrorism or for the purposes of terrorism as defined in s1 of the Terrorism Act 2000. This may include, but is not limited to:

      (i) murder;

      (ii) manslaughter;

      (iii) an offence under section 18 of the Offences against the Person Act 1861 (wounding with intent);

      (iv) an offence under section 23 or 24 of that Act (administering poison etc);

      (v) an offence under section 28 or 29 of that Act (explosives);

      (vi) an offence under section 2, 3 or 5 of the Explosive Substances Act 1883 (causing explosions);

      (vii) an offence under section 1(2) of the Criminal Damage Act 1971 (endangering life by damaging property);

      (viii) an offence under section 1 of the Biological Weapons Act 1974 (biological weapons);

      (ix) an offence under section 2 of the Chemical Weapons Act 1996 (chemical weapons);

      (x) an offence under section 56 of the Terrorism Act 2000 (directing a terrorist organisation);

(xi) an offence under section 59 of that Act (inciting terrorism overseas);

(xii) offences under (v), (vii) and (viii) above given jurisdiction by virtue of section 62 of that Act (terrorist bombing overseas); and

(xiii) an offence under section 5 of the Terrorism Act 2006 (preparation of terrorism acts).

(b) one of the offences charged is indictable only and includes an allegation by the prosecution of serious fraud that took place during an act of terrorism or for the purposes of terrorism as defined in s1 of the Terrorism Act 2000, and the prosecutor gives a notice under section 51B of the Crime and Disorder Act 1998 (Notices in serious or complex fraud cases) ;

(c) one of the offences charged is indictable only, which includes an allegation that a defendant conspired, incited or attempted to commit an offence under sub paragraphs (1)(a) or (b) above; or

(d) it is a case (which can be indictable only or triable either way) that a judge of the terrorism cases list (see paragraph 2(a) below) considers should be a terrorism case. In deciding whether a case not covered by subparagraphs (1)(a), (b) or (c) above should be a terrorism case, the judge may hear representations from the Crown Prosecution Service.

The terrorism cases list

2(a) All terrorism cases, wherever they originate in England and Wales, will be managed in a list known as the 'terrorism cases list' by such judges of the High Court as are nominated by the President of the Queen's Bench Division.

2(b) Such cases will be tried, unless otherwise directed by the President of the Queen's Bench Division, by a judge of the High Court as nominated by the President of the Queen's Bench Division.

3. The judges managing the terrorism cases referred to in paragraph 2(a) will be supported by the London and South Eastern Regional Co-ordinator's Office (the 'Regional Co-ordinator's Office'). An official of that office or an individual nominated by that office will act as the case progression officer for cases in that list for the purposes of CrimPR 3.4.

Procedure after charge

4. Immediately after a person has been charged in a terrorism case, anywhere in England and Wales, a representative of the Crown Prosecution Service will notify the person on the 24 hour rota for special jurisdiction matters at Westminster Magistrates' Court of the following information:

(a) the full name of each defendant and the name of his solicitor of other legal representative, if known;

(b) the charges laid;

(c) the name and contact details of the Crown Prosecutor with responsibility for the case, if known; and

(d) confirmation that the case is a terrorism case.

5. The person on the 24-hour rota will then ensure that all terrorism cases wherever they are charged in England and Wales are listed before the Chief Magistrate or other District Judge designated under the Terrorism Act 2000. Unless the Chief Magistrate or other District Judge designated under the Terrorism Act 2000 directs otherwise, the first appearance of all defendants accused of terrorism offences will be listed at Westminster Magistrates' Court.

6. In order to comply with section 46 of the Police and Criminal Evidence Act 1984, if a defendant in a terrorism case is charged at a police station within the local justice area in which Westminster Magistrates' Court is situated, the defendant must be brought before Westminster Magistrates' Court as soon as is practicable and in any event not later than the first sitting after he is charged with the offence. If a defendant in a terrorism case is charged in a police station outside the local justice area in which Westminster Magistrates' Court is situated, unless the Chief Magistrate or other designated judge directs otherwise, the defendant must be removed to that area as soon as is practicable. He must then be brought before Westminster Magistrates' Court as soon as is practicable after his arrival in the area and in any event not later than the first sitting of Westminster Magistrates' Court after his arrival in that area.

7. As soon as is practicable after charge a representative of the Crown Prosecution Service will also provide the Regional Listing Co-ordinator's Office with the information listed in paragraph 4 above.

8. The Regional Co-ordinator's Office will then ensure that the Chief Magistrate and the Legal Aid Agency have the same information.

Cases to be sent to the Crown Court under section 51 of the Crime and Disorder Act 1998

9. The court should ordinarily direct that the plea and trial preparation hearing should take place about 14 days after charge.

10. The sending magistrates' court should contact the Regional Listing Co-ordinator's Office who will be responsible for notifying the magistrates' court as to the relevant Crown Court to which to send the case.

11. In all terrorism cases, the magistrates' court case progression form for cases sent to the Crown Court under section 51 of the Crime and Disorder Act 1998 should not be used. Instead of the automatic directions set out in that form, the magistrates' court shall make the following directions to facilitate the preliminary hearing at the Crown Court:

    (a) three days prior to the preliminary hearing in the terrorism cases list, the prosecution must serve upon each defendant and the Regional Listing co-ordinator:

        (i) a preliminary summary of the case;

        (ii) the names of those who are to represent the prosecution, if known;

        (iii) an estimate of the length of the trial;

        (iv) a suggested provisional timetable which should generally include:

            - the general nature of further enquiries being made by the prosecution,
            - the time needed for the completion of such enquiries,

- the time required by the prosecution to review the case,
- a timetable for the phased service of the evidence,
- the time for the provision by the Attorney General for his consent if necessary,
- the time for service of the detailed defence case statement,
- the date for the case management hearing, and
- the estimated trial date;

(v) a preliminary statement of the possible disclosure issues setting out the nature and scale of the problem, including the amount of unused material, the manner in which the prosecution seeks to deal with these matters and a suggested timetable for discharging their statutory duty; and

(vi) any information relating to bail and custody time limits.

(b) one day prior to the preliminary hearing in the terrorist cases list, each defendant must serve in writing on the Regional Listing Co-ordinator and the prosecution:

(i) the proposed representation;

(ii) observations on the timetable; and

(iii) an indication of plea and the general nature of the defence.

Cases to be sent to the Crown Court after the prosecutor gives notice under section 51B of the Crime and Disorder Act 1998

12. If a terrorism case is to be sent to the Crown Court after the prosecutor gives a notice under section 51B of the Crime and Disorder Act 1998 the magistrates' court should proceed as in paragraphs 9 – 11 above.

13. When a terrorism case is so sent the case will go into the terrorism list and be managed by a judge as described in paragraph 2(a) above.

The plea and trial preparation hearing at the Crown Court

14. At the plea and trial preparation hearing, the judge will determine whether the case is one to remain in the terrorism list and if so, give directions setting the provisional timetable.

15. The Legal Aid Agency must attend the hearing by an authorised officer to assist the court.

Use of video links

16. Unless a judge otherwise directs, all Crown Court hearings prior to the trial will be conducted by video link for all defendants in custody.

Security

17. The police service and the prison service will provide the Regional Listing Co-ordinator's Office with an initial joint assessment of the security risks associated with any court appearance by the defendants within 14 days of charge. Any subsequent changes in circumstances or the assessment of risk which have the potential to impact

upon the choice of trial venue will be notified to the Regional Listing Co-ordinator's Office immediately.

Annex 5 Management of cases from the Organised Crime Division of the Crown Prosecution Service

CPD XIII Annex 5

MANAGEMENT OF CASES FROM THE ORGANISED CRIME DIVISION OF THE CROWN PROSECUTION SERVICE

This annex replaces the guidance issued by the Senior Presiding Judge in January 2014.

1. The Organised Crime Division (OCD) of the CPS is responsible for prosecution of cases from the National Crime Agency (NCA). Typically, these cases involve more than one defendant, are voluminous and raise complex and specialised issues of law. It is recognised that if not closely managed, such cases have the potential to cost vast amounts of public money and take longer than necessary.

2. This annex applies to all cases handled by the OCD.

Designated court centres

3. Subject to the overriding discretion of the Presiding Judges of the circuit, OCD cases should normally be heard at Designated Court Centres (DCC). The process of designating court centres for this purpose has taken into account geographical factors and the size, security and facilities of those court centres. The designated court centres are:

   (a) Northern Circuit: Manchester, Liverpool and Preston.

   (b) North Eastern Circuit: Leeds, Newcastle and Sheffield.

   (c) Western Circuit: Bristol and Winchester.

   (d) South Eastern Circuit (not including London): Reading, Luton, Chelmsford, Ipswich, Maidstone, Lewes and Hove.

   (e) South Eastern Circuit (London only): Southwark, Blackfriars, Kingston, Woolwich, Croydon and the Central Criminal Court.

   (f) Midland Circuit: Birmingham, Leicester and Nottingham.

   (g) Wales Circuit: Cardiff, Swansea and Mold.

Selection of designated court centres

4. If arrests are made in different parts of the country and the OCD seeks to have all defendants tried by one Crown Court, the OCD will, at the earliest opportunity, write to the relevant court cluster manager with a recommendation as to the appropriate designated court centre, requesting that the decision be made by the relevant Presiding Judges. In the event that the designated court centre within one region is unable to accommodate a case, for example, as a result of a custody time limit expiry date, consideration may be given to transferring the case to a DCC in another region with the consent of the relevant Presiding Judges.

5. There will be a single point of contact person at the OCD for each HMCTS region, to assist listing co-ordinators.

6. The single contact person for each HMCTS region will be the relevant cluster manager, with the exception of the South Eastern Circuit where the appropriate person will be the Regional Listing Co-ordinator.

Designation of the trial judge

7. The trial judge will be assigned by the Presiding Judge at the earliest opportunity, and in accordance with CPD XIII Listing E: Allocation of Business within the Crown Court. Where the trial judge is unable to continue with the case, all further pre-trial hearings should be by a single judge until a replacement has been assigned.

Procedure after charge

8. Within 24 hours of the laying of a charge, a representative of the OCD will notify the relevant cluster manager of the following information to enable an agreement to be reached between that cluster manager and the reviewing CPS lawyer before the first appearance as to the DCC to which the case should be sent :

   (a) the full name of each defendant and the name of his legal representatives, if known;

   (b) the charges laid; and

   (c) the name and contact details of the Crown Prosecutor with responsibility for the case.

Exceptions

9. Where it is not possible to have a case dealt with at a DCC, the OCD should liaise closely with the relevant cluster manager and the Presiding Judges to ensure that the cases are sent to the most appropriate court centre. This will, among other things, take into account the location of the likely source of the case, convenience of the witnesses, travelling distance for OCD staff and facilities at the court centres.

10. In the event that it is allocated to a non-designated court centre, the OCD should be permitted to make representations in writing to the Presiding Judges within 14 days as to why the venue is not suitable. The Presiding Judges will consider the reasons and, if necessary, hold a hearing. The CPS may renew their request at any stage where further reasons come to light that may affect the original decision on venue.

11. Nothing in this annex should be taken to remove the right of the defence to make representations as to the venue.

INDEX