Judiciary of England and Wales

9 January 2023

LISTING ADVICE

1. This document contains advice to Resident and Presiding Judges when exercising their judicial functions in respect of Crown Court listing as reflected in CrimPD XIII. The advice has been developed by a judicial working group, operating as part of the Crown Court Improvement Group (CCIG) under my chairmanship. HMCTS and the CPS have both contributed statistical information which has been analysed and which supports the conclusions to which I have come. The advice is, however, my sole responsibility assisted by the judicial members of the CCIG, HHJJ Martin Edmunds KC, Nicholas Dean KC, Peter Blair KC, Rosa Dean, Heather Norton and Samantha Leigh. They are all Resident Judges themselves (Isleworth, Manchester, Bristol, Snaresbrook, Reading and Basildon respectively). They do not all agree with all of what I say, but my advice is the better for their views.

2. The principles of Better Case Management (BCM), continue to apply. They accord with the CrimPR and CrimPD. The group has helped me to prepare a new BCM Revival Handbook, which is published alongside this advice. This replaces all existing such documents, including the Defence Toolkit[1]. It permits the approach which I suggest here.

3. Greater levels of adherence to BCM principles set out in the BCM Revival Handbook by all parties and agencies across the criminal justice system would do a great deal to alleviate pressures on it. All courts should expect compliance, and should seek to encourage and ensure it.

4. The original BCM guidance envisaged no more than three hearings in most cases which go to trial: the PTPH, the trial, and, if required, a sentencing hearing. This has never happened. The average number of hearings per trial case has been much higher than 3 (theoretically it should be less than 3), and is now running at 7. The pandemic has contributed to this with additional hearings being listed to deal with practical problems caused by COVID, and I acknowledge the need for hearings to deal with matters such as.28 or s.41, but the trend has been continuous and pre-dates COVID. The CBA dispute further created a perceived need for

[1] It does not replace Transforming Summary Justice

further hearings. The lengthy delays have caused additional custody time limit and bail hearings. Nevertheless, the excess of actual hearings per case over the theoretical BCM model is a long-standing fact. This number needs to come down.

5. This advice is intended to reduce the number of hearings per trial case, and to make them more valuable. Statistical evidence suggests that the courts which have been adopting something like the model I propose are performing better than those which are not, by some measures. One critical measurement is the number of trials which do not go ahead as trials on the listed date either because there is a late plea, the parties are not ready, or there is no court time. I consider that the system I set out here is shown by the data to improve this measurement. We need to resolve the cases which resolve without a trial earlier, and to manage the risk of trials being vacated at or shortly before trial better.

6. I shall try and avoid jargon, because different judges ascribe different meanings to phrases such as “warned list”. Some courts operate something quite close to what I propose and call it a “warned list”, others use different terminology. I do recommend that courts consider carefully the value of the kind of warned list (particularly a two week warned list) which results in cases being listed across a lengthy period and are called in for trial, if at all, at very short notice. The shortage of criminal advocates means that this is likely to fail in many cases. Courts which continue to use warned lists must carefully monitor their effectiveness in getting all cases listed in the warned list on for trial during the warned period. As a general rule I would suggest that in modern conditions a warned list is likely to be most useful in smaller court centres. Whatever method is used for providing additional work to fill gaps, it is always necessary to consider with care what kind of cases can properly be listed “at risk”.

7. The system I propose is in operation, with modifications, in many courts already. It is as follows:

    a) **PTPH**: the court endeavours to ensure that the PTPH takes place after there has been engagement between defence and prosecution lawyers and after the defendant has received informed legal advice on plea. Steps have been taken by all relevant agencies to enable this to happen in the first 28 days of the life of the case in the Crown Court, and courts should monitor and report on the effectiveness of those steps in their area. They should seek support if there are blockers which prevent PTPHs being effective, see below. Whilst the figure will vary in different parts of the country, approximately 85% of all Crown Court cases result from Full Code Test charging decisions by the CPS after consideration of a file submitted by the police. It is these cases where disclosure of the prosecution case should take place promptly to enable the defence to prepare properly before PTPH. The CPS has undertaken to adopt this practice and to commence a

phased national roll out, and to deliver more than the CrimPR require of them.

b) In the event of a Not Guilty plea, a trial date should be fixed and the PTPH Form fully completed to reflect the judge's orders. The Resident Judge will decide how much work should be listed for trial, for any given period based on experience of the case mix and culture of the court. In all courts this will involve listing more work for any given week than can be accommodated, but the excess will vary in line with the judgment of the Resident Judge. Success is achieved when all listed trials which require a trial and are ready for trial are effective, and when all courts are kept busy. This is unobtainable perfection because all criminal listing involves an assessment of how much work will go short, and how much extra work needs to be listed to fill the gaps. List too little and some courts and judges are not occupied. List too much and some cases are not reached. The aim is to get as close as possible.

c) **Stage 2**: at the end of Stage 2 a pre-trial hearing can take place in cases where the PTPH judge considers it would be useful. By this time all parties should have given the necessary disclosure and the issues should be clear. Any non-compliance with directions will be apparent and can be addressed. It should be becoming clear whether the case will actually be tried and whether it will be ready for the listed date. It will be not long after the PTPH and may, in current circumstances, be many months before the trial date.

d) **A PTR between 3 and 5 weeks before trial**: in current circumstances this may be a long time after Stage 2. This will bring all cases to be heard in 3-5 weeks' time before the court, so that they can be assessed for readiness and the firmness of the Not Guilty plea. It is hoped that the majority of the cases which do not go ahead as trials in the listed week can be identified and managed at this hearing, and confirmed dates given for those cases which will require a trial. This should reduce the number of cases taken out of the list on the day of trial or very shortly before that date and give clarity to the court and all parties in those cases. I suggest that this hearing should happen in all but the simplest of cases, and that it should take place in the presence of the defendant. There is good, recent, statistical evidence that this works in ensuring that the trials listed a few weeks ahead are ready for trial. It should also enable a properly reliable estimate.

8. Therefore, to reduce the number of ineffective trials (and the extent of over-listing required to cover ineffective trials) I recommend that each Resident Judge set out a policy that at PTPH the judge should make orders in all cases:
    - For there to be a FCMH at a date after Stage 2 and, usually, for the defendant to attend
    - For the provision of a CoTR on a date the court regards as most useful

- For there to be a PTR between 5 and 3 weeks before the trial date and, usually, for the defendant to attend
- To utilise the CoTR to identify cases where the PTR can safely be vacated.

9. When the defendant is required to attend the defence advocate should normally also attend in person. However, consideration should be given to permitting advocates to appear by CVP where appropriate and a direction either way should be included in the order. The court should be ready to vacate those hearings if sufficient written assurance from all parties is received, in good time before the hearing, that they are not required.

10. The terms of the policy are subject to the view of the Resident Judge and local resources. Where a Resident Judge elects not routinely to list cases for PTR then an alternate process whereby the court can be satisfied of trial readiness must be adopted.

11. Ad hoc mentions and other hearings should not be necessary when all parties know that the case will be considered by the court at these pre-determined intervals. Any additional case management which requires attention between hearings should, if possible, be done by means of written directions without hearings. The Digital Case system is an excellent vehicle for this process.

12. There is an expectation that the defence and prosecution will ask for a case to be listed at any stage if they consider that this will resolve the case. If such requests are made, I would expect them to be met.

13. Judges dealing with PTPH lists will have to be given time to prepare their list properly. Arrangements will be required to ensure that the greater use of directions without hearings is also properly resourced and the work shared between the judges of the court.

14. A Report by the CCIG is published at the same time as this advice and sets out what the different agencies in the criminal justice system have done to improve the management of Crown Court cases in the first weeks of their life, so as to promote the PTPH as a hearing where many cases can be properly resolved. The courts should now expect that level of performance and if they find that blockers continue to exist, they should seek the assistance of the Presiding Judges, and can be referred to the CCIG through my office by email to SPJOffice@judiciary.uk.

The Rt Hon. Sir Andrew Edis
Senior Presiding Judge for England and Wales