Criminal Practice Directions 2023

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1. GENERAL MATTERS

1.1 Introduction

1.1.1 This Practice Direction revokes the 2015 Criminal Practice Directions as amended but for the following parts:

a. CPD I 3Q Failure to comply with requirement to give name, date of birth and nationality

b. CPD I 5C Issue of medical certificates

c. CPD II 7A First court attendance after charge and detention,

d. CPD III 14C.11 failure to surrender to bail: consequences and penalties

e. CPD VI 24A Role of the justices' clerk/legal advisor

f. CPD VII J Bind over orders and conditional discharges

g. CPD XI 48A Contempt in the face of the magistrates' court,

1.1.2 Reference should continue to be made to the Practice Direction (Costs in Criminal Proceedings) 2015.

1.1.3 The Criminal Procedure Rules and the Criminal Practice Directions are the law.

1.1.4 They provide a code of current practice that is binding on the courts to which they are directed.

1.1.5 Participants must comply with the Rules and Practice Direction, and directions made by the court.

1.1.6 The Lord Chief Justice may issue forms for use with the Criminal Procedure Rules[1] and may amend or withdraw those forms. Unless a court otherwise directs any such form must be used in accordance with the relevant rule(s), these Practice Directions and any instructions in the form itself.[2]

[1] See CrimPR 5.1.

[2] Forms issued by the Lord Chief Justice under this paragraph are published at https://www.gov.uk/guidance/criminal-procedure-rules-forms.

2. OPEN JUSTICE

2.1 Overarching Principle

2.1.1 The general principle is that the administration of justice must be done in public, the public and the media have a right to attend all court hearings, and the media is able to report those proceedings fully and contemporaneously.[3]

2.1.2 The open justice principle is reflected in **CrimPR 6.2(1)** which requires the court, when exercising its powers in relation to reporting and access restrictions, to have regard to the importance of dealing with criminal cases in public and allowing a public hearing to be reported to the public.

2.2 Access to courts

2.2.1 It is the court's responsibility to ensure that members of the public can, in so far as possible, have access to courtrooms to observe proceedings.[4]

2.2.2 The court also has the responsibility to ensure that members of the public present in the court do not disrupt proceedings.

2.2.3 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. Access may be restricted to prevent members of the public, as well as participants in the proceedings, from entering and leaving the courtroom during the following parts of proceedings:

a. Arraignment.

b. Empanelling and swearing in of the jury.

c. Oath taking or affirmation.

d. Return of verdict by a jury.

e. Passing of sentence.

2.2.4 It is unlawful to issue a blanket policy[5] for a court centre that restricts access during other parts of the proceedings. Unless the judge has specifically restricted access to the public gallery for good reason, the public can enter and leave the courtroom, provided they do so without disrupting proceedings.

2.2.5 In cases involving witnesses who are young or vulnerable the court should consider whether to restrict attendance by members of the public during that witness's evidence.

2.2.6 Facilities for reporting proceedings (subject to any legislative restrictions) must be provided. The court may restrict the number of reporters in the courtroom to such as is judged practicable and desirable. In ruling on any challenged claim to attend in the courtroom for the purpose of reporting, the

[3] See *Khuja v Times Newspapers Ltd* [2019] AC 161
[4] See CrimPR r 6.4.
[5] *R (on the application of Ewing) v Isleworth Crown Court* [2019] EWHC 288 (Admin)

court should be mindful of the public's general right to be informed about the administration of justice.

2.2.7 From 28 June 2022, courts have new powers to allow reporters and other members of the public to observe hearings remotely.[6]

2.2.8 Practice Guidance issued by the Lord Chief Justice and the Senior President of Tribunals and Remote Observation Guidance of hearings in the criminal courts issued by the President of the King's Bench Division provide detailed assistance on the approach that the courts should adopt.

2.3 Taking notes in court

2.3.1 The permission of the court is not required to take notes in court.

2.3.2 Where there are reasonable grounds to suspect that the taking of notes may be for an unlawful purpose, or that it may disrupt the proceedings, then court staff should make appropriate enquiries. The court has power to prohibit note-taking by a specified individual or individuals if it is necessary and proportionate.

2.3.3 Examples include:

a. Where there is reason to believe that the taking of notes involves the transmission of live text-based communications without the required permission.

b. Where there is reason to believe that notes are being taken in order to facilitate the contravention of a reporting restriction.

2.4 Live text-based communications

2.4.1 Members of the public require the court's permission to transmit live text-based communications from court; accredited journalists do not.

2.5 Sound recordings

2.5.1 Unauthorised recording of proceedings in court is a contempt of court and may be subject to forfeiture of the device.[7]

2.5.2 In exercising the court's unlimited discretion to grant, withhold or withdraw leave to use equipment for recording sound or to impose conditions as to the use of the recording, the following factors may be relevant:

a. Any reasonable need on the part of the applicant for the recording to be made.

b. The risk that the recording could be used for the purpose of briefing other witnesses.

[6] Section 85A Courts Act 2003 as inserted by s.198 Police, Crime, Sentencing and Courts Act 2022. The regime is implemented by the Remote Observation and Recording (Courts and Tribunals) Regulations 2022.
[7] See s.9 Contempt of Court Act 1981 and **CrimPR 6.10**.

c. Any possibility that the use of the recording device would disturb the proceedings or distract or impact adversely on any witnesses or other participants.

2.5.3 The Court should always consider whether to impose conditions as to the use of any recording made. The identity and role of the applicant for leave and the nature of the subject matter of the proceedings may be relevant to this.

2.6 Access to material held by the court

2.6.1 The principle of open justice applies not only to physical presence and the viewing of proceedings, but in access to material held by the court.[8]

2.6.2 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.[9]

2.6.3 The court may be asked to provide the public, including journalists, with access to information or documents (or copies)[10] held by the court and in some instances such applications will be challenged.

2.6.4 **CrimPR 5.8** requires court staff to supply some information on request without a judicial decision. The rule regulates the manner in which such requests for information should be made, and **CrimPR 5.10** the approach to be adopted by the Court in responding to requests referred by staff under **CrimPR 5.8(7)**.[11]

2.6.5 Where any material is supplied by the court it remains the responsibility of the recipient to ensure that they comply with any and all restrictions relating to it such as reporting restrictions.

2.6.6 There is no requirement for the court to consider the non-disclosure provisions of the Data Protection Act 2018 as the exemption under Sch 2 part 1 para 5 applies to all disclosure made under 'any enactment … or by the order of a court', which includes under the Criminal Procedure Rules.

2.6.7 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, then there is a greater presumption in favour of providing the requested material. This

[8] *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618

[9] To note the protocol between the NPCC and CPS. Material should be sought under the relevant protocol before an application is made to the court.

[10] For the purposes of this direction, 'document' includes images in photographic, digital including DVD format, video, CCTV or any other form.

[11] To note the protocol between HMCTS and the media.

approach respects the role of the press as a 'public watchdog' in a democratic society.[12]

2.6.8 Where an application is made by a reporter, the general principle is that the court should supply documents and information unless (a) there is a good reason not to, in order to protect the rights or legitimate interests of others, and/or (b) the request will not place an undue burden on the court.[13]

2.6.9 Court staff should verify the identity and press credentials of the applicant.

2.6.10 The supply of information[14] 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[15] to a member of the public, including to the accredited media or their legal representatives.

Document Type	**Considerations on Whether to Supply**
Opening notes	Once placed before the court should usually be provided. Where there is no note, permission to obtain the transcript of the prosecution opening should usually be given.
Statements agreed under s.9 and admissions made under s.10 Criminal Justice Act 1967	Rule 5.10 considerations apply. A request by the media should usually be granted if they have been read aloud in entirety. If only summarised or read aloud in part then access may only be given to that part if proportionate to do so.
Statements of witnesses who give oral evidence	This should not usually be provided. Open justice is satisfied by public access to the hearing
Material disclosed under CPIA 1996	May only be supplied to the extent that the content is deployed at trial, when it becomes public.
An up to date, unmarked copy of the jury bundle and exhibits (including video footage shown to the jury)	Consider: i) whether access to the document is necessary to understand or report the case; ii) privacy of third parties; iii) reporting restrictions, and iv) risks of prejudice to a fair trial in this or any other case.
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: ss.33, 34 and 35 LASPO Act 2012, but subject to the trial judge's permission.

[12] *Observer and Guardian v United Kingdom* (1992) 14 E.H.R.R. 153, Times November 27, 1991

[13] *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618 at [87].

[14] Under **CrimPR 5.8(7) and 5.10**.

[15] Under **CrimPR 5.8(7) and 5.10**.

Document Type	Considerations on Whether to Supply
Skeleton arguments and written submissions	Once placed before the court should usually be provided, but subject to the trial judge's permission.
Written decisions by the court, other than those read aloud in public or treated as if so read	If the only reason for delivering a decision that way is to promote efficiency and expedition then generally a copy should be provided if requested once the decision is final. Relevant reporting restrictions may mean a redacted version is supplied.
Victim Personal Statements	Usually confidential, even where reference has been made to it, or quoted from it in court.
Sentencing remarks	Subject to reporting restrictions, these should usually be provided, if the judge was reading from a prepared script which was handed out immediately afterwards; if not, then permission to obtain a transcript should usually be given.
Pre-sentence reports; medical reports; Reports and summaries for confiscation	Usually confidential, even where reference has been made to it, or quoted from it in court.
Transcripts	Transcripts of hearings in open court can be obtained for a fee from the transcription service provider. See paragraphs 2.6.18-2.6.22 below.
Means forms	Usually confidential, even where reference has been made to it, or quoted from it in court.

2.6.11 It may be convenient for copies to be provided electronically by advocates, as long as 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. Where material is to be given a wider circulation than the accredited media judicial superintendence is required.

2.6.12 Judges must not exercise an editorial judgment about 'the adequacy of the material already available to the paper for its journalistic purpose'.[16] 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.

[16] *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618 at [82].

Specific prohibitions against the provision of information

2.6.13 Various statutory provisions impose specific prohibitions against the provision of information, including the Rehabilitation of Offenders Act 1974, s.18 Criminal Procedure and Investigations Act 1996 (CPIA 1996) ('unused material' disclosed by the prosecution), ss.33, 34 and 35 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO Act 2012) (privileged information furnished to the Legal Aid Agency) and reporting restrictions generally.[17]

2.6.14 Reports of allocation or sending proceedings are restricted by s.52A Crime and Disorder Act 1998. 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 s.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.

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

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

Written decisions

2.6.17 Where the Criminal Procedure Rules allow for a determination without a hearing, the court should consider delivering the decision in writing, without a public hearing.

Transcripts

2.6.18 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 a transcript to an individual applicant. However, any reporting restrictions will continue to apply to a recipient of the 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 may 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

[17] Those most likely to be encountered are listed in the note to **CrimPR 5.8**.

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."

2.6.19 The default position is that the transcript is provided unredacted. It is good practice for the court to remind the recipient that reporting restrictions may apply, and that it is their responsibility to comply. Exceptionally, the judge may order that the transcript must be redacted before it is supplied to a recipient, or that the 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. If the judge orders that some content be redacted from the transcript, the transcribers should be directed to produce a version that complies with that order. The court will check that any redacted transcript complies before release.

2.6.20 A request for a transcript may be refused or be subject to appropriate redaction, for example, where circumstances cause 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, and despite any such suspicions, cogent and compelling reasons will be required to deny a request for transcript of such proceedings. 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 for the request under **CrimPR 5.5** to be treated as a request under **CrimPR 5.8**; and then for the court to review that request under **CrimPR 5.10**.

2.6.21 Some of those applying for transcripts may be taken to be aware of the significance of reporting restrictions and thus unlikely to contravene any such restriction. Such applicants include public authorities within the meaning of s.6 Human Rights Act 1998[18] and 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 refuse any such body access to an unredacted transcript of proceedings in public, irrespective of whether reporting restrictions do or do not apply.

2.6.22 **CrimPR Part 5** imposes no time limit on a request for the supply of a transcript. The assumption is that transcripts 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.[19]

[18] 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.

[19] Sections 5 and 8 Public Records Act 1958.

3. SECURITY AT COURT

3.1 High risk defendants at court

3.1.1 Her Majesty's Prison and Probation Service (HMPPS) must notify the listing officer of all:

a. Category A prisoners;

b. those on the Escape-List and Restricted Status prisoners; or

c. other prisoners who have otherwise been assessed as presenting a significant risk of violence or harm.

3.1.2 The listing officer shall ensure that high risk prisoners will:

a. as far as possible, have administrative and remand appearances listed by way of live link; and

b. have priority for the use of live link equipment.

3.1.3 In all proceedings that require the appearance in person of a high-risk prisoner, the proceedings must be listed at an appropriately secure court building and in a court with a secure dock.

3.1.4 Where HMPPS consider that more extensive security measures than normal are required, they must submit a written application in support. The written application must be sent to the relevant court officer along with current, specific and credible evidence that the security measures sought are both necessary and proportionate to the identified risk and that the risk cannot be managed in any other way. The defence must be given the opportunity to make representations.

3.1.5 In determining the application, the court must consider whether the available security measures are sufficient taking account of the risk of prejudice to a fair trial.

3.1.6 Security measures the court should consider include:

a. the use of live link;

b. transferring the case to a more secure courtroom;

c. the deployment of additional escort staff and/or police in the courtroom or building;

d. securing the courtroom for all or part of the proceedings;

e. the accused giving evidence from the secure dock;

f. the use of approved restraints;[20]

[20] The court should have regard to Article 3 ECHR, which prohibits degrading treatment, see *Ranniman v Finland* (1997) 26 EHRR 56. No prisoner should be handcuffed in court unless there are reasonable grounds for apprehending that they will be violent or will attempt to escape.

g. the deployment of armed police in the court building;[21]

h. in exceptional circumstances, moving the hearing to a prison.

3.2 Armed police at court

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

3.2.1 This Practice Direction applies to all criminal and extradition cases in which a police unit requests authorisation for presence of armed police officers in the Royal Courts of Justice, the Crown Court or magistrates' court buildings at any time, including during delivery of prisoners to court.

3.2.2 This Practice Direction does not apply to police officers carrying tasers, CS or PAVA incapacitant sprays as part of their operational equipment, when attending court buildings on routine court business, and when giving evidence.

Emergency situations

3.2.3 This Practice Direction does not apply in emergencies, when police must respond appropriately, according to their professional judgement.

Designated court centres

3.2.4 Applications may only be made for armed police presence in designated Crown Court and magistrates' court centres (see below). This list may be revised in consultation with the National Police Chiefs' Council (NPCC) and HMCTS.

3.2.5 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.

3.2.6 The magistrates' courts designated for firearms deployment are: Westminster Magistrates' Court and Belmarsh Magistrates' Court.

[21] 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 courtroom is for the Senior Presiding Judge.

Preparatory work prior to applications in all cases

3.2.7 Before making any application for the presence of armed police officers in the court building, the officer should check with the court whether the prisoner can appear by live link.

3.2.8 Each requesting officer will attend the relevant court before an application is made to ensure there have been no changes to the premises and no circumstances which might affect security arrangements.

Applying to the Royal Courts of Justice

3.2.9 All applications relating to criminal and extradition cases must be sent to the Listing Office in which the case is due to appear. The application should be sent by email if possible and must be on the standard form.

3.2.10 The Listing Office will notify the President of the King's Bench Division (if the case is listed in the High Court) or the Vice-President of the Court of Appeal, Criminal Division (if the case is listed in that court), providing a copy of the email and any supporting evidence. The PKBD or V-P may ask to see the senior police officer concerned.

3.2.11 The PKBD or V-P will consider the application. The relevant Court Office will be notified of the decision and must immediately inform the police by telephone. The decision must then be confirmed by email to the police. If refused, the police must be informed.

Applying to the Crown Court

3.2.12 All applications, save for when a case listed in the High Court or Court of Appeal Criminal Division is to be heard in a Crown Court, should be sent to the Cluster Manager, or their deputy, by email if possible, and must be on the standard form. Where a case listed in the High Court or the Court of Appeal, Criminal Division is to be heard at a Crown Court, the procedure applicable to the Royal Courts of Justice should be followed, but with the relevant Resident Judge and the Presiding Judges being kept informed.

3.2.13 The Presiding Judges of the circuit and the Resident Judge will be notified by email, and supplied with a copy of the form and any supporting evidence. The Presiding Judge may ask to see the senior police officer concerned.

3.2.14 The Presiding Judge will consider the application. If the Presiding Judge approves the application, it should be forwarded to the Senior Presiding Judge's Office. The Senior Presiding Judge will make the final decision. The Presiding Judge will receive email confirmation of that decision.

3.2.15 The Presiding Judge will notify the appropriate court officer and the Resident Judge of the decision. The appropriate court officer will immediately inform the police of the decision by telephone. The decision must then be confirmed by email to the police.

Urgent applications to the Crown Court

3.2.16 If an application for the deployment of armed police arises as an urgent issue the Resident Judge has a discretion to agree such deployment without obtaining 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 police Firearms Division;

b. the Resident Judge must try to contact the Presiding Judge and/or 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 Senior Presiding Judge, the Resident Judge may grant the application if satisfied:

i. that the deployment of armed officers is necessary;

ii. that without such deployment there would be significant risk to public safety; and

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

3.2.17 The Resident Judge must keep the position under continual review, to ensure it remains appropriate and necessary. The Resident Judge must only authorise deployment of armed officers as an interim measure pending the decision of the Senior Presiding Judge which must be sought in the usual way.

Applying to the magistrates' courts

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

3.2.19 The Chief Magistrate must 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 email confirmation of that decision and will then notify the requesting police officer and, where authorisation is given, the relevant magistrates' court of the decision. If refused, the police must be informed.

Urgent applications in the magistrates' courts

3.2.20 If the temporary deployment of armed police arises as an urgent issue, 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 must 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 police Firearms Division;

b. 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 deployment of armed officers is necessary;

   ii. that without such deployment there would be significant risk to public safety; and

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

3.2.21 The Chief Magistrate must keep the position under continual review and ensure it remains appropriate and necessary. The Chief Magistrate must ensure that the Senior Presiding Judge is notified of the full circumstances of the authorisation and any review.

4. CUSTODY AND BAIL

4.1 Forfeiture of monies lodged as security or pledged by a surety[22]

Key principles:

4.1.1 The court must have regard to the following key principles:

a. A security is the deposit of money, usually as a **pre-release** condition.

b. A surety **undertakes** to forfeit a sum if the accused fails to surrender as required.

c. Care must be taken to explain the obligations and consequences, before a surety or security is taken.

d. The surety or provider of a security has a duty to report to authorities if there is a concern that the accused will abscond. In those circumstances, the surety or security can apply to withdraw.

e. Upon failure to surrender, a surety or security should be given a reasonable but limited opportunity in which to seek to persuade the accused to surrender.

4.1.2 The court should not defer or adjourn a decision on ~~e~~nforcement of a surety or security until the accused appears before the court.

4.1.3 Before the court makes a decision on forfeiture, it should give sureties and securities an opportunity to make representations in person, through advocates or by statement.

4.1.4 As to forfeiture:

a. The court should forfeit no more than necessary to maintain integrity/confidence in the system, but the starting point is forfeiture in full.

b. An accused who absconds without warning their sureties does not release them from their responsibilities.

c. Culpability or the lack of it is a factor, but is not a reason to reduce or set aside the surety's obligations.

d. If a surety's financial circumstances alter in a way which would affect their ability to pay in the event it is called in, they should notify the court immediately.

Notifying sureties of hearing dates

4.1.5 If a surety has not been made continuous until trial, the surety must be reconfirmed before the renewal of bail at the end of a hearing. If the surety

[22] The procedure is set out at **CrimPR 14.15**. Relevant forms for court staff are to be found on XHIBIT.

is not present, the accused may be remanded in custody until the recognisance is provided.

4.1.6 The Court must also notify sureties of the hearing dates at which the accused is ordered to appear as far in advance as possible.[23]

4.2 Failure to surrender to bail: consequences and penalties

Initiating Proceedings – Bail granted by a court

4.2.1 Where it appears that an accused has committed an offence under the Bail Act 1976, proceedings should be initiated either:

a. by the court of its own motion;

b. on application by the prosecutor.

4.2.2 The charge should be put to the accused, and they should be asked to enter a plea.

Timing of disposal

4.2.3 Courts should not, without good reason, adjourn the disposal of a failure to surrender offence contrary to ss.6(1) or 6(2) Bail Act 1976 until the conclusion of the proceedings in respect of which bail was granted. The court should deal with the accused as soon as practicable, taking into account when proceedings in respect of which bail was granted are expected to conclude, the seriousness of the offence for which the accused is already being prosecuted, the type of penalty that might be imposed for the Bail Act offence and other relevant circumstances.[24]

4.2.4 If the Bail Act offence is adjourned alongside the substantive proceedings, it is still necessary to consider imposing a separate penalty at the conclusion of the proceedings. Bail should usually be revoked in the meantime.

Conduct of Proceedings

4.2.5 Proceedings under s.6 Bail Act 1976 may be conducted either as a summary offence or as a criminal contempt of court. Where commenced by the police or prosecutor, the proceedings will be conducted by the prosecutor who, if the matter is contested, will call evidence. Where the court initiates proceedings, with or without a prosecutor's invitation, it may expect the prosecutor's assistance e.g. in cross-examining the accused, if required.

4.2.6 The burden of proof is on the accused to prove they had reasonable cause for failure to surrender to custody.[25]

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[23] See the observations of Parker LJ in *R v Crown Court at Reading ex p. Bello* [1992] 3 All ER 353

[24] See the Sentencing Council Guideline.

[25] Section 6(3) Bail Act 1976.

Voluntary attendance at court after failure to attend

4.2.7 Where:

a. the accused failed to attend court at the appointed time;

b. a warrant has been issued for the accused's arrest for that failure; and

c. the accused subsequently attends voluntarily, or indicates a wish to do so, e.g. by making enquiries of court staff,

the court may take any of the following courses of action:

i. if the accused is present, and the relevant personnel are available, arrange for the execution there and then of the warrant;

ii. if the accused is present, deal there and then with the case as if consequent on the execution of the warrant;

iii. arrange a resumed hearing in the accused's case at the next convenient opportunity, while warning the accused that the warrant remains liable to be executed in the meantime; and

iv. withdraw the warrant and arrange a resumed hearing in the accused's case at the next convenient opportunity. The court should not withdraw an outstanding warrant unless the accused provides evidence of an established current residential address, a telephone number and, if available, an email address.

4.2.8 If an outstanding warrant is executed immediately, or if the court decides to deal at once with the accused as if consequent on arrest, then paragraphs 4.2.1-4.2.6 of this Practice Direction apply.

4.2.9 Only in exceptional circumstances should efforts be made to accommodate an accused 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.

4.2.10 If an outstanding warrant for the accused's arrest for failure to attend is executed or withdrawn, court staff must ensure this is notified to those responsible for national police records.

4.3 Bail during trial

4.3.1 During the trial it may be a proper exercise of discretion to refuse bail, e.g. if the accused cannot otherwise be kept apart from witnesses and jurors.

4.3.2 An accused who was on bail while on remand should not be refused bail during the trial unless, in the opinion of the court, the circumstances have changed to justify this refusal.

5. TRIAL MANAGEMENT

5.1 Defendant on bail: anticipated not guilty plea

5.1.1 Where the prosecutor does not anticipate a guilty plea at the first hearing in a magistrates' court:

a. it is essential that Initial Details of the Prosecution Case are sufficient to assist the court to identify real issues and give directions for an effective magistrates' court or Crown Court trial, and

b. the prosecution should provide in advance of the first hearing:

i. summary circumstances of the offence(s) including any interview account;

ii. statements and exhibits the prosecution has identified as important for plea or initial case management, including CCTV relied upon and any Streamlined Forensic Report(s);

iii. witness availability;

iv. defendant's criminal record;

v. Victim Personal Statement(s), if available;

vi. an indication of any likely prosecution expert evidence;

vii. information as to special measures, bad character or hearsay, where applicable.

5.1.2 In addition to material required by **CrimPR Part 8**, the Preparation for Effective Trial form must be fully completed in accordance with its published guidance. The form's directions and timetable apply unless the court otherwise orders.

5.1.3 In order to further the overriding objective the Better Case Management Form must be completed for cases sent to the Crown Court.

5.2 Case progression and trial preparation

Plea and Trial Preparation Hearing

5.2.1 In a case in which a magistrates' court has directed a Plea and Trial Preparation Hearing (PTPH):

a. an indictment should be uploaded at least seven days in advance of the hearing;

b. the time allowed for conduct of the PTPH must be sufficient for effective trial preparation.

5.2.2 If the first time a defendant indicates to their representative an intention to plead guilty is after being sent for trial but before the PTPH:

a. the defence representative must notify the Crown Court and prosecution immediately;

b. the court will ensure there is sufficient time at the PTPH for sentence; and

c. the case should be drawn to the attention of a judge for consideration as to the need for a pre-sentence report.

5.2.3 A judge must order a pre-sentence report where obliged to do under s.30 Sentencing Act 2020;

5.2.4 In all other circumstances a judge may order a pre-sentence report if it appears that either:

a. there may be 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.

5.2.5 The ordering of a pre-sentence report by the magistrates' court does not indicate the likelihood of any sentencing outcome. All options remain open in the Crown Court.

5.2.6 If at the PTPH the defendant pleads guilty and no pre-sentence report has been prepared, the court should if possible obtain a stand down report (if required).

5.2.7 Where the defendant was remanded in custody after being charged and sent for trial without service of Initial Details of the Prosecution Case:

a. at least seven days before the PTPH the prosecutor should serve, as a minimum:

i. summary circumstances of the offence(s) including any interview account;

ii. statements and exhibits the prosecution has identified as important for plea or initial case management, including CCTV relied upon and any Streamlined Forensic Report(s);

iii. witness availability;

iv. defendant's criminal record;

v. Victim Personal Statement(s), if available;

vi. an indication of any likely prosecution expert evidence;

vii. information as to special measures, bad character or hearsay, where applicable.

5.2.8 If at the PTPH the defendant does not plead guilty, the court should identify the issues in the case, and give appropriate directions for an effective trial.

Further case management hearing

5.2.9 After the PTPH further case management hearings may be required before the trial in order to:

a. give directions for an effective trial;

b. set ground rules for the conduct of the questioning of a witness or defendant;

c. further the overriding objective.

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

Compliance courts

5.2.11 If a participant fails to comply with a case management direction, that participant 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 and the hearings may be conducted by live link facilities or other electronic means, as the court may direct. Courts should maintain a record of any non-compliance.[26] It will be for the Presiding Judges, Resident Judge and Heads of Legal Operations (HoLO) to decide locally how often compliance courts should be held, depending on the scale and nature of the problem at each court centre.

Conduct of case progression hearings

5.2.12 As far as possible:

a. case progression should be managed without a hearing in the courtroom;

b. using electronic communication;[27]

c. court staff should be nominated to conduct case progression as part of their role;[28]

d. to aid effective communication the prosecution and defence should provide the court with details of who shall be dealing with the case at the earliest opportunity.

Completion of Effective Trial Monitoring form

5.2.13 It is imperative that the Effective Trial Monitoring form is accurately completed by the parties for all cases listed for trial. Advocates must complete the form providing the relevant details.[29]

5.3 Defendant's record

5.3.1 The prosecution must provide up to date and accurate information about the defendant's record of previous convictions, cautions, reprimands, etc. in the Initial Details of the Prosecution Case. The record must be supplied to the court, the defence and (if applicable) Probation Service.

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[26] See the Message from the Lord Chief Justice – Remote Attendance by Advocates in the Crown Court.
[27] In accordance with **CrimPR 3.5(2)(d)**.
[28] In accordance with **CrimPR 3.4(2)**.
[29] See Operational Guidance notes.

5.3.2 The record should usually be provided as a Police National Computer (PNC) printout, supplemented by Forms MG16/17 if the police hold convictions/cautions not shown on PNC.

5.3.3 If the defence object to the accuracy of the record, they should inform the prosecutor immediately.

5.4 Trial adjournment in magistrates' court

5.4.1 Parties and other participants must further the overriding objective and prepare cases so that they can proceed on the date set. Any change that may affect the listing of a case must be communicated between the parties and to the court as soon as reasonably practicable. Any communication must clearly identify the issue and any direction sought and should be referred to a legal adviser or case progression officer.

Change of plea

5.4.2 Where a defendant who previously has pleaded not guilty decides to enter a guilty plea, notice of that decision, and any basis of plea, must 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. Consideration must be given to whether the plea should be taken in advance of the date already set for trial and before the witnesses are de-warned.

Trial adjournment

5.4.3 It should be rare for applications to adjourn to be made on the day of trial, except in circumstances that could not have been foreseen. It may be necessary to hear a contested application to adjourn a trial either very shortly before or even on the date on which that trial is due to begin.

5.4.4 Section 10 of the Magistrates' Courts Act 1980 confers a discretionary power to adjourn. The starting point is that the trial should proceed.[30] The court must not be deterred from a prompt and robust determination. As an exercise of discretion, the High Court will only interfere with a decision on adjournment if there are compelling reasons so to do.

5.4.5 A court may be justified in refusing an adjournment even if that means the prosecutor is unable to prove the prosecution case or a part of it, or that the defendant is unable to explore an issue. 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.

5.4.6 The court must ensure that any adjournment is for as short a period as possible, for example by using time vacated by another trial or by conducting the hearing at another court or court centre. A just outcome may be achieved by a short adjournment to later on the same day. The shorter

[30] See judgment of Gross LJ in *DPP v Petrie* [2015] EWHC 48 (Admin) and *R (DPP) v Sunderland Magistrates' Court, R (Kharaghan) v City of London Magistrates' Court* [2018] EWHC 229 (Admin)

the time the more favourably the court may consider an application for an adjournment, but even a short adjournment must be justified.

Applications to vacate trials

5.4.7 Applications to vacate trials must be made promptly and in writing on the standard form, 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 in advance of the hearing under **CrimPR 3.5** applying the preceding principles. The parties must provide full and accurate information to the court to enable it to assess where the interests of justice lie.[31]

5.4.8 Any application and any response should, as a minimum, include:

a. a chronology of the case, recording the dates of compliance with any directions and of communication between the parties;

b. an assessment of the interests of justice, addressing the factors identified above and indicating the likely effect should the court conclude that the trial should proceed on the date fixed;

c. any restrictions on the future availability of witnesses;

d. 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;

e. any evidence supporting the reasons why an application to vacate is being made.

5.4.9 On receipt of an application, each other party should serve that party's response on the court and on the applicant within two business days unless the court otherwise directs. Any request for the matter to be determined at a hearing must be served with the application to vacate the trial (or with the response to that application), together with the reasons for that request, to enable the court to decide whether a hearing is needed.

5.4.10 In reaching a decision whether to adjourn the court must consider the following matters:

a. That the court's duty is to deal justly with the case, which includes doing justice between the parties.

b. The need for expedition and that delay is generally inimical to the interests of justice – it has the potential to bring the criminal justice system into disrepute.

c. That proceedings in a magistrates' court should be simple and speedy.

d. That applications for adjournments must be rigorously scrutinised and the court must have cogent reasons for adjourning.

e. The need to review the history of the case.

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[31] *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)

f. The need to examine the nature of the evidence and whether memories of relevant evidence are liable to fade.

g. The interests of any co-defendant(s).

h. The interests of any witness(es) who have attended, with particular emphasis on their age and/or vulnerability.

i. The interest of the defendant(s) in resolving the matter without undue 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.

j. The fact that the more serious the charge the greater the public interest in the trial proceeding and the greater the responsibility of the parties to have engaged in effective preparation.

k. Where a defendant asks for an adjournment whether they will be able to present the defence fully without one and the extent to which the ability to do so may be compromised by an immediate trial.

l. The court must consider the consequences of an adjournment on:

   i. the ability of witnesses and defendants accurately to recall events;

   ii. the impact of adjournment on other cases;

   iii. the length of time it may take to list the case for trial.

m. The court must also consider the nature and gravity of fault on the part of the applicant for the adjournment and who is responsible for it.

Absence of defendant

5.4.11 Where the reason for which the adjournment is sought relates to the absence of the defendant some particular issues arise.

5.4.12 **If the defendant is aged 18 or over:**

a. the court shall proceed in the defendant's absence unless it appears to the court to be contrary to the interests of justice to do so;[32]

b. 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;

c. the court is not obliged to investigate if no reason is offered;

d. the court will take into account all factors, including:

   i. such reasons for absence as may be offered;

   ii. the reliability of the information supplied in support of those reasons;

   iii. the date on which the reasons for absence became known to the defendant and what action the defendant thereafter took in response;

[32] Section 11 Magistrates' Courts Act 1980.

iv. that trial in absence can and sometimes does result in acquittal;

v. that if convicted the defendant can ask that the conviction be re-opened in the interests of justice, for example if absence was involuntary;

vi. if convicted the defendant has a right to a rehearing on appeal to the Crown Court;

e. where the defendant provides a medical note to excuse non-attendance the court must assess the provenance and reliability of the information contained therein and if necessary summons the author to attend court. The court must give reasons explaining why it has decided to proceed or not to proceed with the trial on the date it is listed. The reasons must be specific to the case.

5.4.13 **If the defendant is aged under 18:**

a. there is no presumption that the court should proceed in absence;

b. the potential for an acquittal may still be a relevant factor;

c. the potential for an application to re-open or appeal may also be a relevant matter;

d. the age, vulnerability, or experience of the defendant should be taken into account;

e. 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;

f. the court should consider the interests of any co-defendant in the case proceeding;

g. the interests of any young and/or vulnerable witnesses who have attended.

Absence of witness

5.4.14 Where the court is asked to adjourn because a witness has failed to attend, the court must:

a. rigorously investigate the steps taken to secure that witness's attendance, the fault for non-attendance is a relevant factor when deciding an application to adjourn;

b. critically examine the reasons given for the absence and/or the likelihood of the witness attending should the case be adjourned;

c. consider the relevance of the witness to the case, and whether the witness's statement can be agreed or admitted, in whole or part, as hearsay;

d. consider whether proper notice has been given of the intention to call that witness;

e. consider whether an absent witness can be heard later in the trial;

f. 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, subject to that being possible within a reasonable timescale.

Need for additional evidence

5.4.15 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 must consider whether the party who complains of the failure to serve evidence had informed the other party and the court in advance of the hearing. 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.

5.4.16 In appropriate circumstances the court may refuse to admit evidence rather than adjourning the trial to allow it to be served.[33] Applications to adjourn in order to obtain expert evidence should be rigorously scrutinised and it may not be appropriate to adjourn where the opinion sought is speculative.[34]

Failure to comply with disclosure obligations

5.4.17 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 providing disclosure at that stage. If it cannot, the court should consider whether the parties have complied with their obligations and should consider the relevance of fault.

5.4.18 If the prosecutor has complied or purported to comply with initial disclosure obligations, no further material is disclosable and consequently, in the absence of a defence statement served in accordance with s.6 Criminal Procedure and Investigations Act 1996, no application to adjourn should be granted. 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 application must be made under s.8 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.

[33] *R v Boardman* [2015] EWCA Crim 175; [2015] 1 Cr. App. R. 33; [2015] Crim. L.R. 451
[34] *R v Chabaan* [2003] EWCA Crim 1012

Managing trials within available court time

5.4.19 Where there is a risk of a trial 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:

a. the needs of the parties and witnesses;

b. whether the case has been adjourned before;

c. the seriousness of the offence;

d. giving priority to any cases in which the defendant is in custody by reason only of a trial due to be heard that day;

e. liaison between courtrooms to determine whether all listed trials might be heard through movement of cases.

5.4.20 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 must not 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.

5.4.21 The court is entitled to expect that parties will present their case within the time set during pre-trial case management. If more time is sought the court must keep in mind the need for the trial to be completed within the allocated time with minimal impact on other cases.

5.4.22 It is preferable to complete a trial on the date allocated but it may be appropriate to adjourn part-heard, particularly where it is possible to hear the majority of witnesses. Future listings may have to be moved to accommodate the case.

5.5 Use of live link

5.5.1 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. The Live Link in Criminal Courts Guidance issued by the Lord Chief Justice must be complied with.

Open justice and records of proceedings[35]

5.5.2 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 then that person's participation must be, as nearly as possible, equally audible and, if applicable, equally visible to the public as it would be were that person physically present. Where electronic means of communication are used to conduct a hearing, records of the event must be maintained in the usual way.

[35] See Ch 2, Open Justice.

5.6 Listing as a judicial responsibility and function

5.6.1 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 resources available for criminal justice are deployed as effectively as possible, and that cases are heard by an appropriate judge or bench with minimum delay.

5.6.2 The agreement reached between the Lord Chief Justice and the Secretary of State for Constitutional Affairs and Lord Chancellor ('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 their 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 their functions when they are absent from the court centre. See also paragraph 5.6.5: 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;

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 HoLO with the assistance of the listing officer.

Key principles of listing

5.6.3 When setting the listing practice, the Resident Judge or the Judicial Business Group should take into account the following principles:

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,[36] 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) must be observed.

iv. Every effort must also 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 and the trial can be effective on that date.

d. Ensure that a judge or bench with any necessary authorisation and/or 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. Take account of the:

i. efficient deployment of the judiciary in the Crown Court and the magistrates' courts taking into account relevant sitting requirements for magistrates;

ii. proper use of the courtrooms available at the court;

iii. provision in long and/or complex cases for adequate reading time for the judiciary;

iv. facilities in the available courtrooms, including the security needs (such as a secure dock), size and equipment, such as live link facilities;

v. proper use of jurors;

vi. availability of legal advisers in the magistrates' courts;

vii. 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;

viii. need to list a hearing at a time that is convenient for court users (such as an early hearing time when a young witness is to be called, or a late hearing time when a prisoner is to be brought a long distance).

f. Provide where practicable:

i. the defendant and the prosecution with the advocate of their choice where this does not result in any unreasonable delay to the trial of the case; and,

[36] [2010] EWCA Crim 4

ii. for the efficient deployment of advocates, lawyers and associate prosecutors of the Crown Prosecution Service (CPS), 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.[37]

h. Ensure that proper time (including judicial reading time) is afforded to hearings.

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 approved projects.

5.6.4 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.

Judicial responsibilities

5.6.5 The Resident Judge (Crown Court), and the Judicial Business Group and the HoLO (magistrates' court), of each court is responsible for:

a. monitoring the general performance of the court and the listing practices;

b. ensuring that good practice is implemented throughout the court, such that all hearings commence on time;

c. ensuring that the reasons that a trial did not proceed on the date originally fixed are examined to see if there is any systemic issue;

d. monitoring the timeliness of cases and reporting any cases of serious concern to the Presiding Judge.

5.6.6 Each Judicial Business Group, subject to the overall jurisdiction of the Presiding Judge, is responsible for monitoring the workload and any changes that may impact on listing policies in the magistrates' courts.

5.7 Classification

5.7.1 The classification structure outlined below is solely for the purposes of trial in the Crown Court.

Offences are classified as follows:

5.7.2 Class 1: A:

a. Murder.

[37] See further Ch 3. Security at Court.

b. Attempted Murder.

c. Manslaughter.

d. Infanticide.

e. Child destruction (s.1(1) Infant Life (Preservation) Act 1929).

f. Abortion (s.58 Offences Against the Person Act 1861).

g. Assisting a suicide.

h. Cases including s.5 Domestic Violence, Crime and Victims Act 2004, as amended (if a fatality has resulted).

i. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

5.7.3 Class 1: B:

a. Genocide.

b. Torture, hostage-taking and offences under the War Crimes Act 1991.

c. Offences under ss.51 and 52 International Criminal Courts Act 2001.

d. An offence under s.1 Geneva Conventions Act 1957.

e. 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 Terrorism Act 2000).

f. Piracy, under the Merchant Shipping and Maritime Security Act 1997.

g. Treason.

h. An offence under the Official Secrets Acts.

i. Incitement to disaffection.

j. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

5.7.4 Class 1: C:

a. Prison mutiny, under the Prison Security Act 1992.

b. Riot in the course of serious civil disturbance.

c. 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.

d. Complex sexual offence cases in which there are many complainants (underage, 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.

e. Cases involving people trafficking for sexual, labour or other exploitation and cases of human servitude.

f. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

5.7.5 Class 1: D:

a. Causing death by dangerous driving.

b. Causing death by careless driving.

c. Causing death by unlicensed, disqualified or uninsured driving.

d. Any Health and Safety case resulting in a fatality or permanent serious disability.

e. Any other case resulting in a fatality or permanent serious disability.

f. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

5.7.6 Class 2: A

a. Arson with intent to endanger life or reckless as to whether life was endangered.

b. Cases in which explosives, firearms or imitation firearms are used or carried or possessed.

c. 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 s.18 or s.20 Offences Against the Person Act 1861).

d. Cases in which the defendant is a police officer, member of the legal profession or a high profile or public figure.

e. Cases in which the complainant or an important witness is a high profile or public figure.

f. Riot otherwise than in the course of serious civil disturbance.

g. Child cruelty.

h. Cases including s.5 Domestic Violence, Crime and Victims Act 2004, as amended (if no fatality has resulted).

i. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

5.7.7 Class 2: B

a. Any sexual offence, with the exception of those included in Class 1C.

b. Kidnapping or false imprisonment (with intention to commit a sexual offence or charged on the same indictment as a sexual offence).

c. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

5.7.8 Class 2: C

a. Serious, complex fraud.

b. Serious and/or complex money laundering.

c. Serious and/or complex bribery.

d. Corruption.

e. Complex cases in which the defendant is a corporation (including cases for sentence as well as for trial).

f. 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).

g. Soliciting, inciting, encouraging or assisting, attempting or conspiring to commit any of the above offences or assisting an offender having committed such an offence.

5.7.9 Class 3: All other offences not listed in the classes above.

Deferred Prosecution Agreements

5.7.10 Cases coming before the court under s.45 and Schedule 17 Crime and Courts Act 2013 must be referred to the President of the King's Bench Division who will allocate the matter to a judge from the list. Only the allocated judge may thereafter hear any matter or make any decision in relation to that case.

Criminal Cases Review Commission

5.7.11 Where the Criminal Cases Review Commission 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.

5.8 Referral of cases in the Crown Court to the Resident Judge and to the Presiding Judges

5.8.1 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 or qualifying judge advocate to hear.

5.8.2 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.

5.8.3 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 are listed before judges,

Recorders, qualifying judge advocates, or District Judges (Magistrates' Courts) of suitable seniority and experience, subject to the requirements of this Practice Direction.

5.8.4 In order to assist the Resident Judge and the listing officer, cases sent to the Crown Court should where possible include a brief case summary prepared by the prosecution, if the MG5 police summary uploaded to the Crown Court Digital Case System is insufficient, or does not adequately reflect the evidence. 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

5.8.5 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.

5.8.6 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 listing 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 brought 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.

5.8.7 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

5.8.8 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:

a. an unusually grave or complex case or one in which a novel and important point of law is to be raised;

b. a case where it is alleged that the defendant caused more than one fatality;

c. a non-fatal case of baby shaking where serious injury resulted;

d. a case where the defendant is a police officer, or a member of the legal profession or a high profile figure;

e. a case which for any reason is likely to attract exceptional media attention;

f. a case where a large organisation or corporation may, if convicted, be ordered to pay a very large fine;

g. any case likely to last more than three months.

5.8.9 Resident Judges should refer any other case if they think it is appropriate to do so.

5.8.10 The Resident Judge should 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.

5.8.11 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 judge, to be allocated by the Resident Judge.

5.9 Authorisation of judges

5.9.1 Judges must be authorised by the Lord Chief Justice before they may hear certain types of case.

5.9.2 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.[38]

5.9.3 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.

5.9.4 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 must 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.

5.9.5 Cases in the magistrates' courts involving the imposition of very large fines:

a. Where a defendant appears before a magistrates' court for an either way offence, to which s.85 LASPO Act 2012 applies the case must be dealt with by a DJ(MC) who has been authorised to deal with such cases by the Chief Magistrate. See 5.16 below.

b. 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.14 Sentencing Act 2020, and must do so when the DJ(MC) considers the offence or combination of offences

[38] Also see Terrorism Ch 13.

so serious that the Crown Court should deal with the defendant as if they had been convicted on indictment.

c. 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.

5.10 Allocation of business within the Crown Court

5.10.1 Cases in Class 1A may only be tried by:

a. a High Court Judge;[39]

b. 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

c. a Deputy Circuit Judge to whom the case has been specifically released by the Presiding Judge.

5.10.2 Cases in Class 1B may only be tried by:

a. a High Court Judge; or

b. a Circuit Judge provided that the Presiding Judge has released the case for trial by such a judge; or

c. a Deputy Circuit Judge to whom the case has been specifically released by the Presiding Judge.

5.10.3 Cases in Class 1C may only be tried by:

a. a High Court Judge; or

b. 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.

5.10.4 Cases in Class 1D and 2A may be tried by:

a. a High Court Judge; or

b. a Circuit Judge, or Deputy Circuit Judge, or Deputy High Court Judge appointed under s.9(4) Senior Courts Act 1981, or a Recorder or a qualifying judge advocate, or a District Judge (Magistrates' Court), 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 'a' cases may not be tried by a Recorder or qualifying judge advocate, Deputy High Court Judge appointed under s.9(4) Senior Courts Act 1981, or District Judge (Magistrates' Courts).

5.10.5 Cases in Class 2B may be tried by:

a. a High Court Judge; or

b. a Circuit Judge, or Deputy High Court Judge appointed under s.9(4) Senior Courts Act 1981, or Deputy Circuit Judge, or a Recorder or a

[39] All references to High Court Judge include those sitting in retirement.

qualifying judge advocate, or a District Judge (Magistrates' Court), 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.

5.10.6 Cases in Class 2C may be tried by:

a. a High Court Judge; or

b. a Circuit Judge, or Deputy High Court Judge appointed under s.9(4) Senior Courts Act 1981, or Deputy Circuit Judge, or a Recorder or a qualifying judge advocate, or a District Judge (Magistrates' Court), 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.

5.10.7 Cases in Classes 1D, 2A and 2C will usually be tried by a Circuit Judge.

5.10.8 Cases in Class 3 may be tried by a High Court Judge, or a Circuit Judge, a Deputy Circuit Judge, or Deputy High Court Judge appointed under s.9(4) Senior Courts Act 1981, a Recorder or a qualifying judge advocate, or a District Judge (Magistrates' Court). A case in Class 3 shall not be listed for trial by a High Court Judge except with the consent of a Presiding Judge.

5.10.9 PTPHs should normally be heard by a Circuit Judge, but may, with the approval of the Resident Judge, be heard by any other judge qualified to sit in the Crown Court.

5.10.10 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.

5.10.11 Appeals from the Youth Court in relation to sexual offences shall be heard by:

a. a Resident Judge; or

b. a Circuit Judge nominated by the Resident Judge who is authorised under paragraph 5.9.3 to hear sexual offences in Class 1C or Class 2B; and

c. no more than four magistrates, none of whom took part in the decision under appeal. The magistrates must have undertaken specific training to deal with youth matters.

5.10.12 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.

5.10.13 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 at least the same seniority.

5.10.14 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.

5.11 Listing of trials, custody time limits and transfer of cases

Estimates of trial length

5.11.1 Parties are under a duty to provide accurate time estimates for trial and other proceedings and accurate information about the availability of witnesses, and estimated times for their examination-in-chief and cross-examination.

5.11.2 The prosecutor must draw any custody time limits (CTL) to the attention of the court. A record of the CTL must be recorded in the court records. 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.

Cases in the Crown Court that should usually have fixed trial dates

5.11.3 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:

a. Cases in classes 1A, 1B, 1C, 2B and 2C.

b. Cases involving vulnerable and intimidated witnesses (including domestic abuse cases), whether or not special measures have been ordered by the court.

c. Cases where the witnesses are under 18 or have to come from overseas.

d. Cases estimated to last more than a certain time – the period chosen will depend on the size of the centre and the available judges.

e. Cases where a previous fixed hearing has not been effective.

f. Re-trials.

g. Cases involving expert witnesses.

h. Cases involving an intermediary.

Custody Time Limits

5.11.4 Courts must list cases for trial within the CTL limits set by Parliament. The guiding principles are:

a. At the first court hearing, the prosecution will inform the court when the CTL lapses.

b. 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 (as amended).

c. If suitable, given priority and listed on a date not less than two weeks before the CTL expires, the case may be placed in a warned list.

d. The CTL must be kept under continual review by the parties, HMCTS and the Resident Judge.

e. If the CTL is at risk of being exceeded, an additional hearing should take place. In the Crown Court this should be listed before the Resident Judge or trial judge or other judge nominated by the Resident Judge.

f. 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.

g. 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.

h. Where courtroom or judicial availability is an issue, the court must itself list the case to consider the extension of any CTL. In the Crown Court the Delivery Director of the circuit or region must provide a statement setting out in detail what has been done to try to accommodate the case within the CTL both within that circuit or region and other circuits or regions.

i. Where 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.

5.11.5 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

5.11.6 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.

5.11.7 In cases where a re-trial 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.

Changes to the date of fixed cases in the Crown Court

5.11.8 Once a trial date or window is fixed, it should not be vacated or moved without good reason.

5.11.9 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 hearing is not delayed unduly. The prosecution must consider the impact on witnesses before agreeing to any change.

5.11.10 In all other circumstances, requests to adjourn or vacate fixtures or trial windows must be referred to the Resident Judge for their personal attention; the Resident Judge may delegate the decision to a named deputy.

Transferring cases from one Crown Court to another

5.11.11 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.

5.11.12 Transfer of trials between circuits must be agreed between the Presiding Judges and Delivery Directors of the respective circuits.

5.11.13 Transfer of sentences between circuits must be agreed between the Resident Judges of the courts concerned.

5.12 Listing of hearings other than trials

5.12.1 A party who requests that a case be listed in court must ensure that the court office and any other party (save in a case where an application is being made by one party in the absence of others) is told the basis for the request. All relevant material must be served in good time, and include a time estimate for judicial reading time and for the hearing. The applicant must complete the application within the time estimate provided, unless there are exceptional circumstances.

5.12.2 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.

Confiscation and Related Hearings

5.12.3 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.

5.12.4 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.

5.12.5 It is important that confiscation hearings take place in good time after the defendant is convicted or sentenced.

Breach proceedings

5.12.6 Proceedings in respect of alleged breaches of community and other orders[40] should be dealt with at the court centre where the order was imposed.

[40] **CrimPR Part 32**.

5.12.7 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 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 in the Crown Court over the proper venue should be determined by the relevant Presiding Judges.

Appeals from magistrates' courts

5.12.8 As a general rule, the hearing in the Crown Court of an appeal against conviction or sentence from a magistrates' court[41] should take place at the Crown Court centre to which that magistrates' court ordinarily sends cases for trial or commits for sentence.

5.12.9 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 above.

a. 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 (this will be the case with many convictions under the single justice procedure).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.

b. 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 the appeal should be heard at the Crown Court centre which is the closest to the appellant's home. This exception is likely to apply where the appellant 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.

5.13 Management of cases from the Organised Crime Division of the Crown Prosecution Service

5.13.1 The Serious Economic, Organised Crime and International Directorate (SEOCID) of the CPS is responsible for prosecution of cases from the National Crime Agency (NCA). Typically, these cases involve more than

[41] An appeal to which **CrimPR Part 34** applies.

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.

5.13.2 This section applies to all cases handled by the SEOCID.

Designated court centres

5.13.3 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

5.13.4 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.

5.13.5 There will be a single point of contact person at the OCD for each HMCTS region, to assist listing co-ordinators.

5.13.6 The 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

5.13.7 The trial judge will be assigned by the Presiding Judge at the earliest opportunity, and in accordance with the allocation guidance above. 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

5.13.8 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 their 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

5.13.9 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 alleged offending, convenience of the witnesses, travelling distance for OCD staff and facilities at the court centres.

5.13.10 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.

5.13.11 Nothing in this annex should be taken to remove the right of the defence to make representations as to the venue.

5.14 General principles for the deployment of the judiciary in the magistrates' court

5.14.1 This distils the full deployment guidance issued in November 2012. Relevant sections dealing with allocation of magistrates' court work have been incorporated into this Practice Direction. It does not seek to replace the guidance.

Presumptions

5.14.2 The following illustrative non-exhaustive presumptions ('the Presumptions') provide a flexible framework for deployment of DJ(MC)s and magistrates. The system must be adapted to meet needs according to locality/caseload.

5.14.3 DJ(MC)s should generally be deployed in accordance with 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 routine business, including case management and pre-trial reviews (considering the need for DJ(MC)s to have competence in all areas of work; equitable division of work between magistrates and DJ(MC)s, subject to the interests of justice).

g. Where appropriate, in supporting the training of magistrates.

h. Occasionally, in mixed benches of DJ(MC)s and magistrates (to improve collegiality and magistrates' case management skills).

i. In the short-term tackling of particular local backlogs ('backlog busting'), sometimes in combination with magistrates from the local or (with the SPJ's approval) adjoining benches.

5.14.4 The following case classes necessitate DJ(MC)s and have been excluded from the above presumptions:

a. Extradition.

b. Terrorism.

c. Prison Adjudications.

d. Sex cases in the Youth Court.

e. Cases where the defendant is likely to be sentenced to a very large fine, see 5.16 below.

f. The Special Jurisdiction of the Senior District Judge (Chief Magistrate).

5.14.5 In formulating the Presumptions, the following considerations have been taken into account:

a. Listing cases is a judicial function. In the magistrates' courts the Judicial Business Group, subject to the supervision of the Presiding Judges of the circuit, is responsible for determining day-to-day listing practice in that area. The operation of that listing practice is the responsibility of the HoLOs with the assistance of the listing officer.

b. Equally, providing the training of magistrates is a responsibility of HoLOs.

c. High profile cases should not be treated 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 generalisation, save that they require sensitive handling. Listing decisions will benefit from good communication at local level between the HoLO, DJ(MC)s and the Bench Chair

d. Account must be taken of the need to maintain the competences of all members of the magistrates' court judiciary.

5.14.6 The Special Jurisdiction of the Senior District Judge (Chief Magistrate) concerns:

a. cases with a terrorism connection;

b. cases involving war crimes and crimes against humanity;

c. matters affecting state security;

d. cases brought under the Official Secrets Act;

e. offences involving royalty or Parliament;

f. offences involving diplomats;

g. corruption of public officials;

h. police officers charged with serious offences;

i. cases of unusual sensitivity.

5.14.7 Where cases fall within the category of the Special Jurisdiction they must be heard by:

a. the Senior District Judge (or if not available);

b. the Deputy Senior District Judge (or if not available);

c. a District Judge approved by the Senior District Judge or their deputy for the particular case.

5.14.8 Where it is in doubt whether a case falls within the Special Jurisdiction, reference should always be made to the Senior District Judge or Deputy Senior District Judge for clarification.

5.15 Sexual offences in the Youth Court

5.15.1 This section applies to all cases involving the allocation of an allegation of a sexual offence capable of being committed to the Crown Court for a sentence of long-term detention under s.250 Sentencing Code or included in s.249(1) Sentencing Code i.e. offences punishable in the case of a person aged 21 or over with imprisonment for 14 years or more; sexual assault; child sex offences committed by children or young person, sexual activity with a child family member; inciting a child family member to engage in sexual activity, irrespective of the gravity of the allegation, the age and/or antecedent history of the defendant.

5.15.2 This section does not alter the test that the Youth Court must apply when determining whether a case should be sent to the Crown Court for a potential sentence pursuant to s.250 Sentencing Code.

5.15.3 These cases can only be dealt with by an authorised DJ(MC).

Procedure

5.15.4 The determination of venue in the Youth Court is governed by s.24 MCA 1980 and s.51A Crime and Disorder Act 1998, which provide that the youth must be tried summarily unless charged with such a grave crime that long-term detention is a realistic possibility, or that one of the other exceptions to this presumption arises.

5.15.5 Such cases should be listed before an authorised DJ(MC), by live link if necessary, to make the allocation decision. The prosecution should notify the court in advance to ensure listing before an authorised DJ(MC). 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 Youth Court Bench.

5.15.6 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 Youth Court Bench; however, if the case involves actual, or alleged, penetrative activity, the trial must be heard by an authorised DJ(MC).

5.15.7 If the case must be tried by an authorised DJ(MC), all further procedural hearings should, so far as practicable, be heard by an authorised DJ(MC).

Cases remitted for sentence

5.15.8 All cases remitted for sentence for a sexual offence 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

5.15.9 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 Magistrate's Office for an authorised DJ(MC) to be assigned.

5.16 Cases involving very large fines in the magistrates' court

5.16.1 An authorised DJ(MC) must deal with any allocation decision, trial and sentencing hearing in the following triable either way types of cases:

a. Involving a high risk of, or actual, death or significant, life-changing injury.

b. Involving substantial environmental damage or polluting material of a dangerous nature.

c. Where major adverse effect on human health or quality of life, animal health or flora has resulted.

d. Where major costs through clean-up, site restoration or animal rehabilitation have been incurred.

e. 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. Where the defendant corporation has a turnover in excess of £250 million.

g. Where the court will be expected to analyse complex company accounts.

h. Which are high profile or exceptionally sensitive.

5.16.2 The prosecution agency must notify the HoLO, where practicable, of any such case no fewer than seven days before the first hearing, to ensure an authorised DJ(MC) is available at the first hearing.

5.16.3 The HoLO shall contact the Chief Magistrate's Office to ensure an authorised DJ(MC) can be assigned to deal with such a case. If necessary, consideration should be given to arranging an appropriate DJ(MC)'s attendance via live link.

5.16.4 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 plea, but shall not allocate the case nor, if the accused indicates a guilty plea, impose sentence, commit for sentence, ask for a pre-sentence report or give any indication as to likely sentence that will be imposed. The HoLO shall ensure an authorised DJ(MC) is appointed for the following hearing.

5.16.5 When dealing with sentence, s.14 Sentencing Code 2020 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.

5.16.6 An authorised DJ(MC) should consider allocating the case to the Crown Court or committing the accused for sentence.

6. VULNERABLE PEOPLE AND WITNESS EVIDENCE

6.1 Vulnerable people in the courts

6.1.1 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 accused.[42] This includes enabling a witness or accused to give their best evidence, and enabling an accused to comprehend the proceedings. The pre-trial and trial process should, so far as necessary, be adapted to meet those ends.

6.1.2 Toolkits available through The Advocate's Gateway are a valuable resource. Advocates should consult and follow the relevant guidance whenever they prepare to question a young or otherwise vulnerable witness or accused. Judges should refer advocates to this material and use the toolkits themselves as an aid to case management.

6.1.3 'Vulnerability' may arise by reason of age, but also encompasses anyone who may not be able to participate effectively if reasonable steps are not taken to adapt the court process to their specific needs.

6.1.4 Where there is a vulnerable witness or accused, consideration must be given to holding a 'ground rules hearing' (GRH). The greater the level of vulnerability the more important it will be to hold such a hearing. A GRH is required in all trials involving an intermediary. The arrangements for the trial must be discussed between the judge or magistrate(s), advocates and intermediary before the witness gives evidence. The intermediary must be present for the GRH but is not required to take the oath (the intermediary's declaration is made just before the witness gives evidence).

6.1.5 It is essential for a note of decisions reached in a GRH to be created. The judge must use this document to ensure that the agreed ground rules are complied with. The document should record any adaptations to the trial arrangements that are considered necessary. It should also record any arrangements made for the editing and judicial approval of questions to be asked in cross-examination, where appropriate. Where questions are to be committed to writing and subject to judicial editing, with or without input from an intermediary, then, as a general rule, the proposed questions must be shared with the other parties to the trial. This applies to both vulnerable witnesses and defendants, unless the judge directs otherwise. Where time limits have been set, or subject boundaries for questioning identified, they should also be recorded in an agreed note that is uploaded to the DCS.

6.1.6 The judge must stop over-rigorous or repetitive cross-examination of a child or vulnerable witness/defendant. Intervention by the judge, magistrate(s) or intermediary (if any) is minimised if questioning, taking account of the individual's vulnerability, is discussed in advance and ground rules are agreed and adhered to.

[42] **CrimPR 3.8(3)(a) and (b)**.

6.1.7 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 provide the jury with an appropriate explanation. 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.

6.1.8 Accommodating the needs of young and/or otherwise vulnerable people may require a radical departure 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 is expected to 'put the 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 the case', particularly where there is a risk of a young or otherwise vulnerable witness failing to understand, becoming distressed or acquiescing to leading questions.

6.1.9 Instead of exploring apparent inconsistencies in cross-examination it may, subject to discussion between the judge and the advocate(s), be appropriate for these to be identified to the jury after the witness's evidence. Where appropriate the judge should 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, and thus do not need to be mentioned.

6.1.10 If there is more than one accused, 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 one accused leading the questioning, and the advocate(s) for the other accused asking only ancillary questions relevant to their client's case, without repeating the questioning that has already taken place.

6.1.11 In a trial of a sexual offence, there is an obvious need for sensitivity in the nature of and way questions are asked of a complainant and/or accused. Judges should not permit advocates to ask the witness to point to a part of the witness's own body. Similarly, photographs of the witness's body should not be shown while the witness is giving evidence. If there is a need for a witness to identify a part of the body then the use of body maps will be appropriate.

6.2 Intermediaries

6.2.1 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. Intermediaries are independent of parties and owe their duty to the court.[43]

[43] See **CrimPR 18.26**.Further information is in Intermediaries: Step by Step (Toolkit 16; The Advocate's Gateway, 2015) and chapter 2 of the Equal Treatment Bench Book (Judicial College, 2021).

Assessment

6.2.2 The process of appointment begins 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.[44]

Intermediaries for prosecution and defence witnesses

6.2.3 Intermediaries are a special measure 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.

Intermediaries for defendants

6.2.4 The court may direct the appointment of an intermediary to assist a defendant in reliance on its inherent powers.[45] There is however no presumption that a defendant will be so assisted and, even where an intermediary has the potential to improve the trial process, appointment is not mandatory.[46] The court must adapt the trial process to address a defendant's communication needs.[47]

6.2.5 Other measures designed to accommodate the needs of a vulnerable defendant will also need to be considered, whether or not an intermediary is appointed.[48]

6.2.6 The court may exercise its inherent powers to direct appointment of an intermediary to assist a defendant when giving evidence or for the entire trial. Terms of appointment are for the court.[49]

Ineffective directions for intermediaries to assist defendants

6.2.7 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). A trial will not necessarily be rendered unfair because a direction to appoint an intermediary for the defendant is ineffective. It remains the court's responsibility to adapt the trial process to address the defendant's communication needs. In such a case, a ground rules hearing should be convened to ensure every reasonable step is taken to facilitate the defendant's participation.[50]

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[44] See **CrimPR 18.28**.
[45] See **CrimPR 18.23**.*C v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin)
[46] *R v Cox* [2012] EWCA Crim 549
[47] *R v Cox* [2012] EWCA Crim 549
[48] See **CrimPR 3.8(3), (6), (7)**. See CrimPR 3.9(3)(b), *R v Cox, R (OP) v Ministry of Justice* [2014] EWHC 1944 (Admin) and *R v Rashid* [2017] EWCA Crim 2
[49] See **CrimPR 18.23**. See *R v R* [2015] EWCA Crim 1870, *OP v Secretary of State for Justice* [2014] EWHC 1944 (Admin)
[50] See **CrimPR 3.9**.

Intermediaries for witnesses and defendants under 18

6.2.8 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 must 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.

6.2.9 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

6.2.10 Where the court directs questioning will be conducted through an intermediary the court must hold a ground rules hearing at which the intermediary is required to be present.[51]

6.3 Pre-recording of cross-examination and re-examination for witnesses (s.28 YJCEA 1999)[52]

6.3.1 In any case where these provisions apply, careful attention must be paid to the court's case management powers and the obligations on the parties. Reference should be made to the joint protocol agreed between the police and the CPS.

6.3.2 In the Crown Court the Resident Judge may appoint a judicial lead who will be responsible for monitoring and supervision of the scheme.

6.3.3 Witnesses eligible for special measures under s.28 Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) should be identified promptly by the police. The police should discuss, with the witness or with the witness's parent or carer, the special measures that are available and the witness's needs, such that the most appropriate package of special measures can be identified. This may include use of a Registered Intermediary.

6.3.4 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.

6.3.5 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

[51] See **CrimPR 3.9, 18.26(2)(d)**.
[52] This is to be read in connection with **CrimPR 18**.

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

6.3.6 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.

6.3.7 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, either with or without allocation.

6.3.8 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 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.[53]

6.3.9 If the case is to be tried in the magistrates' court then a suitable timetable for the progress of the case must be set.

Before the Plea and Trial Preparation Hearing in the Crown Court

6.3.10 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 five business days prior to the PTPH. The report of any Registered Intermediary must be served with the application for special measures.

6.3.11 Any defence representations about the application for special measures must be served before the PTPH.

6.3.12 In a homicide case the timetable may need to be adapted at the first bail hearing in the Crown Court.

At the Plea and Trial Preparation Hearing

6.3.13 The court will hear the application, and if it is refused, this Practice Direction ceases to apply.[54]

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

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[53] Section 10.2 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 does not apply.

[54] Section 10.2 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 apply.

6.3.15 The judge will need to consider:

a. 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;

b. 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.

6.3.16 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.

6.3.17 The judge should pay careful regard to whether a s.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 s.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 s.28 hearing and the availability of the judge, the advocates, the witness and a suitable courtroom.

6.3.18 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 is a matter to which the judge should have regard when viewing the situation overall and deciding whether the s.28 special measure will improve and maximise the quality of the evidence. It may be necessary for the judge to revisit the decision if circumstances change.

6.3.19 Against that background, the judge should determine which, if any, of the measures, or combination of them, would be likely to improve so far as practicable the quality of the witness's evidence.

6.3.20 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 disclosure of unused material.[55]

6.3.21 The orders made may include:

a. service of the prosecution evidence within 50 days of sending;

b. directions for service of witness requirements;

c. service of initial disclosure under 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 three weeks of the PTPH;

[55] The correct and timely application of the 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.

d. orders on disclosure of material held by a third party;

e. 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;

f. any editing of the ABE interview;

g. the listing of a GRH (if the judge decides one 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;

h. service of the Ground Rules Hearing Form by the defence advocate;

i. making arrangements for the witness to refresh their memory by viewing the recorded examination-in-chief ('ABE interview');

j. making arrangements for the recorded cross-examination and re-examination hearing under s.28, including fixing a date, time and location;

k. other special measures;

l. where necessary, fixing a date for any further directions hearing whether at the conclusion of the recorded cross-examination and re-examination hearing or subsequently;

m. provision by the prosecution of the paginated jury bundle, if possible, in advance of the s.28 hearing;

n. fixing a date for trial.

6.3.22 The timetable should ensure the prosecution evidence and initial disclosure are served swiftly. The GRH, if one is ordered, will usually be soon after the deadline for service of the defence statement, with the recorded cross-examination and re-examination hearing about one week later. However, there must be time afforded for any further disclosure of unused material following service of the defence statement and for determination of any application under s.8 CPIA 1996. Subject to judicial discretion applications for extensions of time for service of disclosure by either party should generally be refused.

6.3.23 Where the defendant may be unfit to plead, a timetable for s.28 should usually still be set, save in cases where it is indicated that it is unlikely that there would be a trial if the accused is found fit.

6.3.24 As far as possible, without jeopardising 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.

6.3.25 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.

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

6.3.27 Engagement with the Protocol is to be overseen by LITs. A single point of contact in each relevant agency can facilitate speedy disclosure.

Prior to ground rules hearing and hearing under s.28

6.3.28 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 parties must provide a weekly update to the court Case Progression Officer, copied to the judge and parties, detailing the progress and any difficulties or delays in complying with orders. The court may order a further case management hearing if necessary.

6.3.29 Any applications in relation to bad character under ss.100 or 101 Criminal Justice Act 2003 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 GRH.[56]

6.3.30 As a general rule children or otherwise vulnerable witnesses should undertake a court familiarisation visit, including an opportunity to practise on the live link/recording facilities, in advance of the s.28 hearing. If the witness is to give evidence from a remote site then a familiarisation visit should take place at that site. At the GRH the judge and advocates should consider appropriate arrangements for them to talk to the witness prior to cross-examination.

Ground rules hearing

6.3.31 Any appointed Intermediary must attend the GRH.

6.3.32 Depending on the circumstances of the case, the defence advocate at the GRH may be required to conduct the recorded cross-examination. See listing and allocation below on continuity of advocates and release from other cases.

6.3.33 Topics for discussion and agreement at the GRH will depend on the individual needs of the witness, and should be addressed in any intermediary report.

6.3.34 Depending on the circumstances of the case topics may include:

a. when the witness will view the ABE interview;

b. the overall length of cross-examination;

[56] **Parts 21 and 22 of the CrimPR** apply to applications under s.100 and s.41 respectively.

c. the relevance of toolkits;[57]

d. cross-examination by a single advocate in a multi-handed case;

e. any restrictions on the advocate's usual duty to 'put the defence case';

f. what explanation is to be given to the jury.

6.3.35 If a GRH 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:

a. rule on any application under s.100 or s.101 Criminal Justice Act 2003 or s.41 YJCEA 1999, or other applications that may affect the cross-examination;

b. decide how the witness may view exhibits or documents;

c. review progress in complying with orders made and make any necessary orders.

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

6.3.36 This is the start of the trial, and the usual provisions relating to the attendance of an accused apply, as does the guideline on credit for a guilty plea. If the accused enters a guilty plea any reduction in respect of that shall reflect the day of the recorded cross-examination as being the first day of trial.

6.3.37 At the hearing, the witness will be cross-examined and re-examined, if required, via the live link from the courtroom to the witness suite (unless provision has been made for the use of a remote link) and the evidence 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.

6.3.38 The judge, advocates and parties, including the accused, will usually assemble in the courtroom 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. The court will decide this on a case-by-case basis. The accused is entitled to communicate with their representative 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. Where appropriate consideration may be given to having the courtroom cleared if the presence of people in the public gallery is assessed as having the potential to adversely affect the ability of the witness to give their best evidence.

[57] Advocate's Gateway good practice guidance Toolkits

After the recording

6.3.39 At the conclusion of the hearing, the judge must make orders, such as for any necessary editing of the recorded cross-examination, and set a timetable for progress. Any further orders made by the judge should be recorded and uploaded onto the relevant section of the DCS.

6.3.40 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 evidence is not admitted at trial, despite any previous direction. Such direction must be given promptly, preferably immediately after the conclusion of the examination.

6.3.41 Without exception, editing of the ABE interview/examination-in-chief or recorded cross-examination is prohibited without an order of the court.

6.3.42 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 for authorised access.

Preparation for trial

6.3.43 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. Where the Ground Rules Hearing Form[58] outlines questions to be put to the witness, answers to these questions may be recorded electronically by the judge during cross-examination. In combination the document and recording form a contemporaneous note of the hearing which can be served on the parties or uploaded to the DCS as an agreed record.

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

6.3.45 Any application under s.28(5) must be in writing and be served on the court and the prosecution at least 28 days before the date of trial. The application must specify:

a. the topics on which further cross-examination is sought;

b. the material or matter of which the defence has become aware since the original recording;

c. why it was not possible for the defence to have obtained the material or ascertained the matter earlier; and

d. the expected impact on the issues before the court at trial.

[58] Or such other document as may be created in order to record the questions to be asked.

6.3.46 The prosecution should respond in writing within five 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 varied for good reason on application to the judge.

Trial

6.3.47 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.

6.3.48 If the matter was not addressed in advance, the judge should discuss with the advocates how any limitations on questioning should be explained to the jury at the time the evidence is received and/or in summing-up.

After conclusion of trial

6.3.49 Immediately after the trial, the ABE interview/examination-in-chief and the recorded cross-examination and re-examination should be stored securely.

Listing and allocation

6.3.50 Depending on the circumstances of the case, the judge may order that the defence advocate who appeared at the GRH 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.

6.3.51 Although continuity of representation is to be encouraged, it is not mandatory for the advocate who conducted the s.28 cross-examination to represent the defendant at trial for the remainder of the trial.

6.3.52 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 GRH 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)).

6.3.53 Depending on the circumstances of the case, the Resident Judge or the nominated lead judge may order that the GRH 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, including appropriately authorised Recorders, can deal with the trial.[59]

6.3.54 Section 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

[59] Subject to any relevant ticketing requirement.

advocates and a courtroom with the relevant recording equipment. GRHs, 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

6.3.55 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. The parties to the proceedings, and interested parties such as the media, should have the opportunity to make representations before an order is made.

6.4 Vulnerable defendants

6.4.1 A GRH must always be considered in a case involving a young or otherwise vulnerable defendant.

6.4.2 Where one or more defendants is young or otherwise vulnerable consideration should be given to the following matters:

a. The need to sit in a court in which communication is more readily facilitated.

b. An opportunity for a vulnerable defendant to visit the courtroom, out of court hours, before the hearing so that they can familiarise themselves with it. Where an intermediary is being used to help the defendant communicate, the intermediary should accompany the defendant on any pre-trial visit.

c. If the defendant's use of the live link is being considered, they should have an opportunity to have a practice session.

d. The opportunity (subject to security arrangements) for a young or otherwise vulnerable defendant to sit with family or other supporting adult in a place which permits easy, informal communication with their legal representatives. This is especially important where vulnerability arises by reason of age. The court should ensure that a suitable supporting adult is available throughout the course of the proceedings.

e. The need to timetable the case to accommodate the defendant's ability to concentrate.

f. The impact on the non-vulnerable defendants in a multi-handed trial;

g. 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 witnesses.

h. It is generally desirable that those responsible for the security of a vulnerable defendant who is in custody, especially if they are young, should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason.

i. Some cases against vulnerable defendants attract widespread public or media interest. In any such case, the assistance of the police should be enlisted to avoid the defendant being exposed to intimidation, vilification or abuse when attending the court. See further the Judicial College Guide on Press Reporting etc.

j. Where appropriate the defence will provide information about the defendant's welfare.

Vulnerable defendant at trial

6.4.3 Consideration must be given to the need to ensure, by any appropriate means, that the defendant can comprehend and participate effectively in the trial process.

6.4.4 A vulnerable defendant who wishes to give evidence by live link, in accordance with s.33A YJCEA 1999, may apply for a direction to that effect; the procedure in **CrimPR 18.14 to 18.17** should be followed.

6.4.5 The court should be prepared to consider restricting 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 reporting restrictions) 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.[60]

6.4.6 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.

6.5 Appointment of advocates to cross-examine

6.5.1 Where statute prohibits a defendant from cross-examining in person[61] the court should consider the appointment, even on a provisional basis, of a legal representative to do so on their behalf.[62] It is essential that the role and status of the representative is clearly established at the earliest possible opportunity.

[60] See Ch 2 Open Justice.
[61] By virtue of ss.34, 35 or 36 YJCEA 1999.
[62] Section 38(4), YJCEA 1999.

6.5.2 The court should require[63] the defendant to notify the court officer, by the date set by the court, whether the defendant:

a. 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);

b. 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

c. 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 their behalf, giving that lawyer's name and contact details.

6.5.3 If the defendant fails to give notice by the due date then, unless it is apparent that they will, in fact, be represented for the purposes of the case generally, the court must confirm the provisional appointment and proceed accordingly.

Supply of case papers

6.5.4 It is essential for the court appointed advocate to establish what is in issue and to have access to all the necessary material.[64] In the Crown Court, the advocate may be given access to the Crown Court Digital Case System. Where relevant disclosable material is not available on that system it must be supplied to the advocate either by the defendant or by the prosecutor. The prosecutor should not disclose material to the advocate that is irrelevant to the task the advocate is to perform. In a magistrates' court, where the advocate has not been able to access[65] the material from some other source then the court may direct a member of the court staff to provide copies from the court's own records.

Obtaining information and observations from the defendant

6.5.5 A court appointed advocate must only engage with the defendant to the extent that is necessary to establish the issues to be dealt with in cross-examination(s). The advocate cannot and should not 'take instructions' from the defendant, in the usual sense.[66]

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[63] **CrimPR 23**.
[64] **CrimPR 23.2(7)**.
[65] Such as when 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 or directly from the defendant by virtue of s.17(2)(a) CPIA 1996 or from the prosecutor.
[66] YJCEA 1999, s.38(5).

Extent of appointed advocate's duty

6.5.6 The court appointed advocate must fulfil both their professional and statutory duty.[67] Advocates will be alert to, and courts should keep in mind, the extent of the remuneration available to a cross-examination advocate.[68] Such an advocate who, having cross-examined, agrees to continue to represent a defendant may as a consequence not be entitled to any remuneration.

6.6 Witness anonymity orders[69]

Application

6.6.1 An application for a witness anonymity order, whether by the prosecution or the defence, must be made as soon as reasonably practicable. The application does not have to have been determined in advance of the evidence being served. The witness statement setting out the proposed evidence should be redacted to prevent disclosure of the witness's identity.[70] The normal prosecution disclosure duties apply to the witness, albeit the material may have to be similarly redacted.

6.6.2 Where possible, the trial judge should determine the application. The judge will almost invariably require a defence statement to have been served. In the Crown Court, a recording of the hearing to determine the application will be made and the court must treat such a recording in the same way as the recording of an application for a public interest ruling.

6.6.3 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.

6.6.4 The court must scrutinise the confidential information to satisfy itself that the statutory conditions are met. If the court concludes that the only way this can be done is to hear from the witness, then exceptionally it may invite the applicant to call 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 their identity.

6.6.5 The court may, exceptionally, ask the Attorney General to appoint special counsel to assist.[71] Whether to accede to such a request is a matter for the

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[67] See *Abbas v Crown Prosecution Service* [2015] EWHC 579 (Admin); [2015] 2 Cr. App. R. 11; see further Bar Council guidance.

[68] In assessing the amount of which the court has only a limited role: see s.19(3) 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 s.38(4) YJCEA 1999 and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment', and also ss.19(3ZA) and 20(1A)(d) of the 1985 Act and the Costs in Criminal Cases (General) Regulations 1986, as amended.

[69] See ss.86-97 Coroners and Justice Act 2009, **CrimPR 18** and see also *R v Mayers and Others* [2008] EWCA Crim 2989 and *R v Donovan and Kafunda* [2012] EWCA Crim 2749

[70] As permitted by s.87(4) Coroners and Justice Act 2009.

[71] *R v H* [2004] UKHL 3, [2004] 2 A.C. 134 (at para [22]).

Attorney General, and adequate time should be allowed for the consideration of such a request.

6.6.6 Before any order is made, the court must be satisfied of the qualifying conditions under the Coroners and Justice Act 2009.[72] If there is more than one anonymous witness, the nature of any link or the potential for collusion, should be investigated.

6.6.7 The court's decision on an application must be announced in the parties' presence and in public, providing such reasons as it is possible to give without revealing the witness's identity.[73] A record of the reasons must be kept.

An Anonymity Order

6.6.8 The order setting out the specific measures must be recorded in writing, approved by the court and issued on its behalf. An order made in a magistrates' court must be recorded in the court register.

6.6.9 On granting an order the following must 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:

a. Whether the evidence can be received by live link.

b. Whether, and if so how, any pre-trial visit by the anonymous witness is to be arranged.

c. How the witness will enter and leave the court building.

d. Where the witness will wait until they give evidence.

e. Provision for the prosecutor to speak to the anonymous witness before they give evidence.

f. Provision for the anonymous witness to see their statement or view their ABEs.

g. How the witness will enter and leave the courtroom.

h. Provisions to disguise the identity of the anonymous witness whilst they give evidence (e.g. voice modulation, screens).

i. Provisions for the anonymous witness to have any breaks required.

j. Provisions to protect the anonymity of the witness in the event of an emergency such as a security alert.

6.6.10 The written record of the order must not disclose the identity of the witness. It is essential that the order clearly specifies which measures apply to which witness.

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[72] Section 88 of the 2009 Act and see *R v Mayers and Others* [2008] EWCA Crim 2989, [2009] 1 W.L.R. 1915, [2009] 1 Cr. App. R. 30.
[73] And bearing in mind s.90(2) of the Act.

6.6.11 Should the application for anonymity be refused, the court should consider all appropriate arrangements that may assist in that witness being able to give evidence.

6.6.12 The court and the parties must keep under review whether the conditions for making an order continue to be met. Where the court considers the discharge or variation of an order, the procedure must, so far as is required, correspond to that indicated above.[74]

Retention of confidential material

6.6.13 If retained by the court, confidential material must be stored in secure conditions. 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.[75] If the material is released to any such person, the court must ensure that it will be available to the court at trial.

Arrangements at trial

6.6.14 At trial the greatest possible care must be taken to ensure that nothing will compromise the witness's anonymity. The arrangements for the witness must take account of the courtroom layout and means of access for the witness, for the defendant(s) and for members of the public. The risk of a chance encounter between the witness and someone who may recognise them, either then or subsequently, must be prevented.

6.7 Defendant's right to give or not to give evidence

6.7.1 Section 35(2) Criminal Justice and Public Order Act 1994 requires the court, at the appropriate time, to satisfy itself that the defendant knows they can give evidence and that a failure to do so may permit the drawing of adverse inferences.

If the defendant is legally represented

6.7.2 After the close of the prosecution case, if the defendant's representative requests a brief adjournment to advise the defendant 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 they may give evidence and, if they choose not to do so, the jury may draw such inferences as appear proper from their failure to do so?"

6.7.3 If the representative replies to the judge that the defendant has been so advised, then the case shall proceed. If the representative replies that the defendant has not been so advised, then the judge shall direct the representative to do so and should adjourn briefly for this purpose, before proceeding further.

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[74] See s.91 of the Act and **CrimPR 18.21**.
[75] See **CrimPR 18.6**.

If the defendant is not legally represented

6.7.4 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 will be said to the defendant in the presence of the jury and ask if the defendant understands and whether they would like a brief adjournment to consider their position.

6.7.5 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?"

7. EXPERT EVIDENCE

7.1 Admissibility generally

7.1.1 Expert opinion evidence is admissible in criminal proceedings if, in summary:

a. it is relevant to a matter in issue in the proceedings;

b. it is needed to provide the court with information likely to be outside the court's own knowledge and experience;

c. the witness is competent to give that opinion; and

d. the expert opinion is sufficiently reliable to be admitted.

7.1.2 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 opinion is based;

b. the validity of the methodology employed by the expert;

c. 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);

d. 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;

e. 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;

f. the extent to which the expert's opinion is based on material falling outside the expert's own field of expertise;

g. 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);

h. 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

i. 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.

7.1.3 In addition, in considering reliability, and especially the reliability of expert scientific opinion,[76] the court must be astute to identify potential flaws in such opinion which detract from its reliability, for example:

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.

7.1.4 In order to enable full assessment of the reliability of any expert evidence relied upon, all potentially relevant information must be disclosed, 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; see the non-exhaustive list of examples below:[77]

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;

b. any conflict of interest of any kind, other than a potential conflict disclosed in the expert's report;

c. adverse judicial comment regarding a particular expert or corporation or other body for whom the expert works whether by a first instance tribunal or on appeal;

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);

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[76] The court may be assisted by the Royal Society primers.

[77] **CrimPR 19.3(3)(c) and CrimPR 19.2(3)(d)**.

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.

7.1.5 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, those criticised must supply information about the conduct and conclusions of any independent investigation into the incident, and explain what steps, if any, have been taken to address the criticism.

7.1.6 Where matters ostensibly within the scope of the disclosure obligations come to the attention of the court without having been disclosed[78] then subject to any enquiry into the circumstances the potential for exclusion of that evidence will arise.[79]

7.2 Declarations of truth in expert reports

7.2.1 The statement and declaration[80] 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.

[78] The rules require disclosure of what 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.
[79] For example under s.81 Police and Criminal Evidence Act 1984 or s.20 CPIA 1996.
[80] Required by **CrimPR 19.4(j) and (k)**.

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 the CPS Guidance for Experts on Disclosure, Unused Material and Case Management 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."

7.3 Pre-hearing discussion of expert evidence

7.3.1 The court must give a direction for a pre-hearing discussion between experts in every case unless unnecessary.

7.3.2 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.

7.3.3 Any experts' meeting should be conducted in the manner most convenient and cost effective to those involved. The parties must agree an agenda that helps the experts to focus on the relevant issues. The agenda must not be in the form of leading questions and must promote an open discussion. No party may require or encourage an expert to avoid reaching agreement, or to defer reaching agreement, on any matter within the experts' competence.

7.3.4 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.

7.3.5 A statement must be prepared by the experts dealing with paragraphs (a) - (d) above. Individual copies of the statements must be signed or otherwise authenticated by the experts at the conclusion of the discussion, or as soon thereafter as practicable, and in any event within five business days. Copies of the statements must be provided to the parties no later than 10 business days after signing.

7.3.6 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."

7.3.7 If an expert significantly alters an opinion, the joint statement must include a note or addendum by that expert explaining the change of opinion.

8. JURORS

8.1 Excusal

8.1.1 The judge has the power to excuse a person summoned for jury service, stand down a potential juror from the jury panel and discharge a juror during the trial in order to ensure fairness. A judge does not have the power to excuse, stand down or discharge jurors in order to influence the overall composition of the jury panel or jury.[81]

8.1.2 The Court has power[82] to excuse a potential juror:

a. for insufficient understanding of English;

b. whose personal circumstances render it unsuitable for them to serve,[83] whether or not an application has already been made to the jury summoning officer for deferral or excusal.[84]

8.1.3 The Court has a discretion to excuse a police or prison officer from serving on any particular jury. A judge must be informed at the stage of jury selection if any juror in waiting is in these categories. The juror summons warns jurors that the court staff should be informed of this type of employment.

8.1.4 In the case of police officers, the judge should conduct an inquiry of the parties to assess whether a police officer may serve as a juror. A serving police officer can serve provided there is no particular link between the case and where the officer is based. Factors to consider include:

a. whether evidence from the police is in dispute and whether that dispute involves allegations against the police;

b. whether the potential juror knows or has worked with the officers involved in the case;

c. 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.

8.1.5 In the case of a serving prison officer, the judge should inquire whether the individual is employed at a prison linked to the case or has special knowledge of any person involved in a trial.

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[81] *R v Royston Ford* (1989) 89 Cr. App. R. 278

[82] Section 10 Juries Act 1974.

[83] Subject to the capacity to make reasonable adjustments, in respect of which s.196 Police, Crime, Sentencing and Courts Act 2022 has made important changes in respect of jurors who require the services of a British Sign Language interpreter. See further Crim PR 26.6.

[84] *R v Mason* [1981] QB 881; *R v Jalil* [2008] EWCA Crim 2910

8.1.6 The judge must ensure that employees of prosecuting authorities do not serve on a trial prosecuted by their employer. They can serve on a trial prosecuted by another prosecuting authority.[85]

8.2 Standing jurors down

8.2.1 The Court has a common law discretion to stand down a potential juror for a particular trial.

8.2.2 The Court should stand down a potential juror who is personally concerned with the facts of the particular case, closely connected with a prospective witness, or has personal knowledge of the defendant.

8.2.3 The Court should consult with the advocates as to the questions, if any, it may be appropriate to ask potential jurors.[86] A copy of any questionnaire provided must be retained on the Digital Case System, if necessary in a secure area.[87]

8.2.4 The judge should release to the jury bailiff any potential juror who has been excused or stood down from serving on that trial, unless it is considered necessary to excuse that juror from further jury service at that time. Save in those circumstances, such a juror will be released back into the jury pool and may be asked to serve on another trial.

8.3 Swearing in jurors

8.3.1 Jurors may choose to take the juror oath by being sworn or by affirming. All jurors shall take the oath or affirmation in open court in the presence of one another. If jurors choose to swear the oath, they may choose the Holy Book on which to swear. The wording will depend on their faith as indicated to the court.

Preliminary instructions to jurors

8.3.2 After the jury has been sworn and the defendant has been put in their charge the judge must give directions to the jury that they are required to follow.[88]

8.3.3 Every member of the jury must also be provided with their own 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. The notice is not a substitute for the judge's directions, but is designed to reinforce what the judge outlines in the directions. The court clerk must ensure a record is made of the provision of the notice. Jurors should be advised to keep their

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[85] *R v Abdroikov* [2007] UKHL 37; *Hanif v UK* [2011] ECHR 2247; *R v L* [2011] EWCA Crim 65

[86] Guidance on the topics for consideration in a questionnaire can be found in the 'Crown Court Compendium'. **CrimPR 26.4** governs the procedure in relation to jurors' availability for long trials.

[87] *Bermingham and Palombo* [2020] EWCA Crim 1662. If a 'paper' case the copy questionnaires will need to be retained on the court file.

[88] *Taylor* v *The Queen* [2013] UKPC 8

copy of the notice with their summons during the trial. At the end of the trial they should retain the notice.

8.3.4 The judge must warn the jury of the consequences of breaching the legal directions given to them, by informing them as to the potential juror offences and the potential custodial sentences for breach.

8.3.5 The Court should ensure that the jury has clear guidance on the following:

a. The need to try the case only on the evidence and remain faithful to their oath or affirmation.

b. The prohibition on internet searches for matters related to the trial, issues arising or the parties or anyone else connected with the case, including the advocates and judge.

c. The prohibition on discussing 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.

d. The importance of taking no account of any media reports about the case.

e. The collective responsibility of the jury for ensuring that the conduct of each member of the jury is consistent with the jury oath and the judicial directions.

f. The duty to bring any concerns, including concerns about the conduct of other jurors, to the attention of the judge immediately, and not to wait until the case is concluded. The point must be made that, unless that is done while the case is continuing, it may not be possible to deal with the problem at all.

g. The need to raise with the judge any situation in which a juror unexpectedly finds themselves in difficult professional or personal circumstances during the course of the trial.

h. Any other legal directions relevant to the issues in the trial that the judge considers helpful to give at that stage.[89]

8.3.6 Trial judges should also instruct the jury on general matters which will include the time estimate for the trial and normal sitting hours.

8.3.7 Judges should consider reminding jurors of these instructions as appropriate at the end of each day and in particular when they separate after retirement.

8.4 Discharge of a juror during trial

8.4.1 The Court has a common law discretion to discharge a particular juror. Judges should exercise the power sparingly. The need to consider doing so may arise in a wide range of circumstances (e.g. an unexpected change in personal circumstances such as a family emergency or if it transpires during the trial that a juror is not competent to serve). The focus should be

[89] See 8.5 below.

on whether the issue impacts on the ability of the juror to fulfil their task in accordance with their oath.

8.4.2 In longer trials, if the juror has a temporary problem affecting their jury service, it may well be possible to adjourn for a short period in order to allow the juror to deal with the issue. In shorter cases, it may be appropriate to discharge the juror and proceed with a reduced number of jurors.[90]

8.4.3 A juror can, if necessary, be discharged without appearing in open court.

8.5 Jury Directions and Written Material

Early provision of directions

8.5.1 The Court is required to provide directions about the relevant law at any time that will assist the jury to evaluate the evidence.[91] The judge may provide directions prior to any evidence being called, prior to the evidence to which the direction relates or shortly thereafter.

Oral and Written Directions

8.5.2 The Court must give the jury directions on the relevant law orally and, as a general rule, in writing as well.[92]

Written route to verdict

8.5.3 A route to verdict, which poses a series of legal questions the jury must answer in order to arrive at a verdict, may be provided as part of the written directions.[93] Each question should tailor the law to the issues and evidence in the case. The route to verdict may be presented (on paper or digitally) in the form of text, bullet points, a flowchart or other graphic.

Other written materials

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

8.5.5 Examples of written materials that may be considered helpful to provide are chronologies, timelines, a family tree, non-controversial summaries of parts of the evidence and/or agreed expert evidence summaries.

8.5.6 Where a judge proposes to provide the jury with written material this should be shown to the parties in advance in order that they may make submissions and/or refer to the material when addressing the jury.

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[90] The power is implicit in s.16(1) Juries Act 1974.
[91] **CrimPR 25.14(2)**.
[92] *R v AB* [2019] EWCA Crim 875; *R v Grant and others* [2021] EWCA Crim 1243, **CrimPR 25.14(3)(b)**.
[93] **CrimPR 25.14(4)**.

8.5.7 Consideration should be given as to whether guidance as to how to conduct deliberations should be given to the jury.[94]

8.5.8 Copies of all written materials provided to the jury, including all written legal directions, should be retained and/or uploaded to the DCS.

Summary of Evidence

8.5.9 The Court is required to summarise the evidence relevant to the issues to such extent as is necessary.[95]

Jury access to exhibits and evidence in retirement

8.5.10 The Court retains responsibility for deciding what material the jury should have in retirement and what they should not. Judges should invite submissions from the advocates.

8.6 Majority verdict

8.6.1 Before the jury retires the judge must direct the jury to this effect:

> "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."

8.6.2 Only a unanimous verdict can be accepted prior to the jury being given a majority direction.[96] Any enquiry as to verdict ahead of the giving of a majority direction should be in these terms:

> "Have you reached a verdict upon which you are all agreed? Please answer 'Yes' or 'No'."

If the answer is in the affirmative the verdict can be taken. If the answer is 'No' the jury should be sent out again, with a further direction to arrive if possible at a unanimous verdict.[97]

8.6.3 In the event that a majority direction is given (after at least two hours and 10 minutes of deliberation) and it becomes appropriate to enquire of the jury if they have reached a verdict the question should be put in these terms:

> "Have at least ten [where there are 11 or 12 jurors] or nine [where there are 10 jurors] of you agreed on your verdict?";

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[94] See Appendix 9 to the Crown Court Compendium.

[95] **CrimPR 25.14(3)(a)**.

[96] See s.71(4) Juries Act 1974 '…the Crown Court shall……..not accept such a verdict (i.e. by a majority) unless it appears to the court that the jury have had at least two hours for deliberation'. Conventionally the minimum time before giving a majority direction is two hours 10 minutes. This also applies to special verdicts under the Criminal Procedure (Insanity) Act 1964 and the questions to jurors will have to be suitably adjusted.

[97] If the number of jurors has been reduced to nine any verdict must be unanimous.

If ‘Yes’, “Do you find the defendant guilty or not guilty? Please only answer ‘Guilty’ or ‘Not Guilty’.”;

If the verdict is 'Not Guilty', there must be no enquiry as to whether unanimous or by a majority;

If the verdict is 'Guilty', the jury must be asked “Is that the verdict of you all, or by a majority?”;

If ‘Guilty’ by a majority, the jury must be asked “How many of you agreed to the verdict and how many disagreed?”

8.6.4 At any stage when the jury is to be asked for a verdict the clerk will state in open court the cumulative total of the time the jury has been in retirement.

8.6.5 Where there are several counts, more than one defendant and/or alternative verdicts the above procedure will need to be adapted. A judge has a discretion in deciding when to accept partial verdicts; it may be better to give the majority direction before accepting any verdicts. If so the jury should be asked “Have you reached verdicts upon which you are all agreed in respect of all defendants and/or all counts?”.

8.7 Jury irregularity

8.7.1 A jury irregularity is anything that may prevent one or more jurors from remaining faithful to their oath or affirmation.

8.7.2 A jury irregularity may involve contempt of court and/or the commission of an offence by or in relation to a juror. In such cases, the provision of a juror’s details to the police is a matter for the judge.

Irregularity During Trial or Retirement

8.7.3 The primary concern of the judge should be the impact on the trial.

8.7.4 A jury irregularity should be drawn to the attention of the judge in the absence of the jury as soon as it becomes known. The judge should obtain, where possible, a written record of the matter that has been raised.

8.7.5 When the judge becomes aware of a jury irregularity, the judge must follow the procedure set out below:

STEP 1: Consider isolating juror(s)

STEP 2: Consult with advocates

STEP 3: Consider appropriate provisional measures

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)[98]

[98] Reference should be made to the most recent guidance ‘Advisory Note: Contempt in the face of the Court’ (2021).

STEP 1: Isolation

8.7.6 The judge must consider:

a. 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;

b. where two or more jurors are concerned, whether they should also be isolated from each other, particularly if one juror has made an accusation against another.

STEP 2: Consult with advocates

8.7.7 The judge must 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).

8.7.8 The consultation should, unless there is good reason not to do so, be conducted:

a. in open court;

b. in the presence of the defendant; and

c. with all parties represented.

8.7.9 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 courtroom, with the recording system operating, rather than in the judge's room.

8.7.10 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.[99] 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 disclosing to another what is said in court about the jury's deliberations.

STEP 3: Consider appropriate provisional measures

8.7.11 The judge must consider appropriate provisional measures which may include surrender/seizure of electronic communications devices (including potentially those in the possession of a juror[100]) and taking the defendant into custody.

8.7.12 Having made an order for a juror to surrender a device, the judge may require a court security officer to search a juror to determine whether the

[99] Section 20D(1) Juries Act 1974.
[100] Under s.15A(1) Juries Act 1974.

juror has complied with the order.[101] It is contempt of court for a juror to fail to surrender an electronic communications device in accordance with an order for surrender.[102] 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.

8.7.13 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

8.7.14 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, or some further note, 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. However, where there are circumstances internal to the jury, such as friction between members, the whole of the jury should be questioned in open court, through their foreman/woman, (if at the stage where one has been selected) as to their capacity to continue. It is not appropriate in such circumstances to separate and question an individual juror or jurors.[103]

8.7.15 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.[104]

STEP 5: Further consult with advocates

8.7.16 The judge must consult further 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).

8.7.17 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

8.7.18 When deciding how to proceed, the judge may take time to reflect.

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[101] Section 54A Courts Act 2003 contains the court security officer's powers of search and seizure.
[102] Section 15A(5) Juries Act 1974.
[103] *Orgles* [1994] 98 Cr. App. R. 185; *JC and others* [2013] EWCA Crim 368 para 29.
[104] *R v KK and Others* [2020] 1 Cr. App. R. 29 at [80] to [81] and/or *Gabriel* [2020] EWCA Crim 998. As Davis LJ made clear in *Gabriel* a judge should have regard to the PD but '…as the Practice Direction itself makes clear, a judge has to decide what best to do where a jury irregularity occurs, and has to do so by reference to the context and to circumstances which arise in the particular case.'

8.7.19 Considerations may include the stage the trial has reached. The judge should be alert to attempts by the defendant or others to disrupt 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.[105]

8.7.20 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. 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.

8.7.21 If the judge is satisfied that jury tampering has then taken place, depending on the circumstances, the judge may continue the trial without a jury[106] or order a new trial without a jury.[107] Alternatively, the judge may order the trial to be relisted. 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.[108]

STEP 7: Consider ancillary matters

8.7.22 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:

a. Contempt in the face of the court by a juror.[109]

b. An offence by a juror[110] or a non-juror under the Juries Act 1974.

c. An offence by a juror[111] or a non-juror[112] other than under the Juries Act 1974.

Contempt in the face of the court by a juror

8.7.23 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

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[105] *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357
[106] Section 46(3) Criminal Justice Act 2003.
[107] Section 46(5) Criminal Justice Act 2003.
[108] Section 44 Criminal Justice Act 2003.
[109] Non-jurors may commit the offence of disclosing, soliciting or obtaining information about the jury's deliberations: s.20D Juries Act 1974.
[110] 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: ss.20A to 20D Juries Act 1974.
[111] A juror may commit an offence such as assault or theft.
[112] 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.

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.

8.7.24 In the case of a minor and clear contempt in the face of the court, the judge may deal with the juror summarily.[113] The judge should also have regard to the Practice Direction regarding contempt of court updated in August 2020 (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.

8.7.25 If a juror fails to comply with an order for surrender of an electronic communications device (see above), 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

8.7.26 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[114] to consider a police investigation, setting out the position neutrally. The officer in the case should not be asked to investigate.

8.7.27 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

8.7.28 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.

8.7.29 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

8.7.30 In light of the offence of disclosing, soliciting or obtaining information about a jury's deliberations,[115] great care is required if a jury irregularity relates to the jury's deliberations.

[113] The judge should follow the procedure in **CrimPR 48.5 to 48.8**.
[114] Attorney General's Office Contempt.SharedMailbox@attorneygeneral.gov.uk Tel: 020 7271 2492.
[115] Section 20D(1) Juries Act 1974.

8.7.31 During the trial, there are exceptions to this offence that enable the judge (and only the judge) to:

a. seek to establish the basic facts of a jury irregularity involving the jury's deliberations (Step 4); and

b. 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).

8.7.32 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.[116]

8.7.33 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:

a. 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;[117] and

b. a relevant investigator means a police force or the Attorney General.[118]

8.7.34 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.[119]

Preparation of statement by judge

8.7.35 If a jury irregularity occurs, and the trial continues, the judge should 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.[120]

Irregularity after the jury has been discharged

8.7.36 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.

Role of the trial judge or court

8.7.37 The judge has no jurisdiction in relation to a jury irregularity that comes to light after the jury has been discharged.[121] This will be when all verdicts on

[116] Sections 20E(2)(a) and 20G(1) Juries Act 1974.
[117] Section 20E(2)(b) Juries Act 1974.
[118] Section 20E(5) Juries Act 1974.
[119] Section 16(1) Juries Act 1974.
[120] See 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
[121] *R v Thompson and others* [2010] EWCA Crim 1623, [2011] 1 WLR 200, [2010] 2 Cr. App. R. 27A

all defendants have been delivered or when the jury has been discharged from giving all verdicts on all defendants.

8.7.38 The judge has no power 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.

8.7.39 A jury irregularity may come to light by a communication from a former juror.

8.7.40 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 of Criminal Appeals setting out the position neutrally. Any communication from a former juror should be forwarded to the Registrar.[122]

Role of the Registrar

8.7.41 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.

8.7.42 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.

8.7.43 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 through the Directors of Legal Services at the Crown Prosecution Service who will refer the matter to the relevant police force and invite the police to consider a police investigation.[123]

8.7.44 If there may be a ground of appeal, the Registrar should inform the defence.

8.7.45 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

8.7.46 If a jury irregularity comes to the attention of the prosecution after the jury has been discharged, which may provide a ground of appeal, the prosecution should notify the defence in accordance with their duties to act fairly and assist in the administration of justice.[124]

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[122] penny.donnelly@criminalappealoffice.justice.gov.uk (Secretary) Tel 020 7947 6103 or generaloffice@criminalappealoffice.justice.gov.uk or 020 7947 6011.
[123] DLS.Team@cps.gov.uk.
[124] *R v Makin* [2004] EWCA Crim 1607, 148 SJLB 821

Role of the defence

8.7.47 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

8.7.48 If a possible jury irregularity comes to light after the jury has been discharged, there are exceptions to the offence of disclosing, soliciting or obtaining information about a jury's deliberations[125] 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.

8.7.49 For example, it is to be noted that:

a. 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;[126]

b. 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 these defined persons;[127]

c. 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 (a) whether an offence or contempt of court has been committed by, or in relation to, a juror or (b) a juror's conduct may provide grounds of appeal;[128]

d. a relevant investigator means a police force, the Attorney General, the Criminal Cases Review Commission (CCRC) or the CPS.[129]

8.7.50 Any discussion about a jury issue should, absent some good reason to proceed in private, be conducted in open court. Both sides must be present for any discussion unless there is some compelling reason for exclusion. All discussions must be recorded.

[125] Section 20D(1) Juries Act 1974.
[126] Section 20F(1) (2) Juries Act 1974.
[127] Section 20F(2) Juries Act 1974.
[128] Section 20F(4) Juries Act 1974.
[129] Section 20F(10) Juries Act 1974.

Investigation by the Criminal Cases Review Commission (CCRC)

8.7.51 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 s.23A Criminal Appeal Act 1968.

8.7.52 If the Court directs the CCRC to conduct an investigation, directions should be given as to the scope of the investigation.

9. SENTENCING

9.1 Guilty plea in the magistrates' courts

9.1.1 Where a defendant enters or indicates a guilty plea in a magistrates' court, the court should consider whether a pre-sentence report is necessary. If so, a 'stand down' report is preferable.

9.2 Pre-Sentence Reports on committal to Crown Court

9.2.1 Where:

a. a magistrates' court is considering committal for sentence; or

b. the defendant has indicated an intention to plead guilty in a matter to be sent to the Crown Court,

the magistrates' court should request a pre-sentence report for the Crown Court if:

i. there may be a realistic alternative to a custodial sentence; or

ii. the defendant may satisfy the dangerous offender criteria; or

iii. there is some other appropriate reason for doing so.

9.2.2 The ordering of a pre-sentence report by the magistrates' court does not indicate the likelihood of any sentencing outcome. All options remain open in the Crown Court. The defendant should be reminded of this.

9.2.3 When a magistrates' court sends a case to the Crown Court for trial and the defendant indicates an intention to plead guilty, arrangements should be made to take the defendant's plea as soon as possible.

9.3 Pleas of guilty in the Crown Court

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

9.3.1 If the judge is invited to approve a prosecutor's proposal to accept a plea to a lesser charge, or to only some of the charges, the judge's decision must be followed. If not invited to approve such a proposed course, it is open to the judge to indicate disagreement and invite the advocate to reconsider the matter and take instructions.

9.3.2 If the judge is of the opinion that the course proposed by the advocate may lead to injustice, the proceedings may be adjourned to allow for the following steps:

a. 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.

Where a guilty plea is offered on a limited basis

9.3.3 The following steps apply:

a. A basis of plea that is proposed by a defendant must be in writing and uploaded to the Digital Case System. The prosecution response must also be uploaded.

b. If the prosecution accepts the defendant's basis of plea, it must ensure that it is factually accurate and enables the judge to sentence appropriately.

c. An 'agreed basis of plea' is always subject to the approval of the court, which will consider whether it appropriately reflects the evidence, whether it is fair and whether it is in the interests of justice.

d. The document recording an 'agreed' basis must be signed by advocates for both sides, and made available to the judge prior to the case being opened.

e. 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.

f. In resolving any disputed factual matters, the prosecution must consider its primary duty to the court and the interests of justice. If there are material factual disputes which could reasonably affect sentence then the prosecution must inform the court of this and not acquiesce or agree to any document containing material factual disputes.

g. In some instances, the prosecution may consider that it lacks the evidence positively to dispute the defendant's account, for example, where the defendant asserts a matter outside the knowledge of the prosecution. This does not mean those assertions should be agreed. In such a case, the prosecution should test the defendant's evidence.

h. The court must invite the parties to make representations about whether the dispute is material to sentence; and if the court decides that it is a material dispute, the court must invite such further representations or evidence as it may require and resolve the dispute.[130]

i. A judge is entitled 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.

[130] *R v Newton* (1982) 77 Cr. App. R. 13, (1982) 4 Cr. App. R. (S.) 388

j. 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 their case, the defence advocate should be prepared to call the defendant. If the defendant is not willing to testify, the judge may, subject to any explanation given, draw such inferences as appear appropriate.

k. The decision whether or not a *Newton* hearing[131] is required is one for the judge. Evidence in a *Newton* hearing is called by the parties in the usual way and the criminal burden and standard of proof applies. The prosecutor should not leave the questioning to the judge, but should assist the court by exploring the issues which the court requires to be explored. The rules of evidence should be followed, and judges should direct themselves appropriately.[132]

l. A judge is obliged to hold a *Newton* hearing unless sure that the basis of plea is manifestly false or the defendant declines to engage in the *Newton* hearing, whether by giving evidence or otherwise.

m. A basis of plea should not normally set out matters of mitigation. If there are mitigating factors that require resolution prior to sentence, the process does not amount to a *Newton* hearing. In so far as facts fall to be established the defence will have to discharge the civil burden to do so. Whether matters of mitigation need to be resolved is for the judge to determine.

Pleas of guilty in cases involving serious or complex fraud – basis of plea agreed by the prosecution and defence accompanied by joint submissions as to sentence[133]

9.3.4 In this part:

a. 'a plea agreement' means a written basis of plea agreed between the prosecution and defendant(s), supported by admissible documentary evidence or admissions under s.10 Criminal Justice Act 1967;

b. 'a sentencing submission' means sentencing submissions made jointly by the prosecution and defence as to the applicable sentencing range in the relevant sentencing guideline and any appropriate sentencing authorities 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 exceeds £500,000;

ii. there is a significant international dimension;

[131] See Crim PR 25.16.
[132] See *R v Underwood* [2004] EWCA Crim 2256 para [6]-[10] for additional guidance.
[133] 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'.

iii. the case requires specialist 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

9.3.5 The procedure regarding agreed bases of plea outlined above, applies equally to the acceptance of pleas under this procedure. However, because 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.

9.3.6 Where the defendant has not yet appeared before the Crown Court, the prosecutor must serve on the court and the parties and, where appropriate, upload to the DCS full details of the plea agreement and sentencing submission(s) at least seven 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 are to be submitted in accordance with the Attorney General's Plea Discussion Guidelines. The court should set a date for the matter to be heard, and the prosecutor must send to the Court and/or upload to DCS full details of the plea agreement and sentencing submission(s) as soon as practicable, or in accordance with the directions of the court.

9.3.7 The details of the plea agreement must be sufficient 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. The information required will include:

a. the plea agreement;

b. the sentencing submission(s);

c. all of the material provided by the prosecution to the defendant in the course of the plea discussions;

d. relevant material provided by the defendant, for example documents relating to personal mitigation; and

e. 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.

9.3.8 To ensure that its consideration of the plea agreement and sentencing submissions does not cause any unnecessary further delay the court should at all times have regard to:

a. the length of time that has elapsed since the date of the occurrence of the events giving rise to the plea discussions;

b. the time taken to interview the defendant;

c. the date of charge and the prospective trial date (if the matter were to proceed to trial).

Status of plea agreement and joint sentencing submissions

9.3.9 Where a plea agreement and joint sentencing submissions are made 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.

9.3.10 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.

9.3.11 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').

9.3.12 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 the plea,[134] the signed plea agreement may be treated as confession evidence, and may be used against the defendant at a later stage in those or any other proceedings. Any credit for a timely guilty plea may be lost. The court may exercise its discretion under s.78 Police and Criminal Evidence Act 1984 (PACE 1984) to exclude any such evidence.

9.3.13 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, Control and Management of Heavy Fraud and other Complex Criminal Cases or as required.

[134] **CrimPR 25.5**.

9.4 Indications of sentence[135]

9.4.1 When providing:

a. a '*Goodyear* indication' (a sentence indication under **CrimPR 3.31**) in the Crown Court; or

b. responding to a defendant's request for an indication under **CrimPR 3.16(3)(b)** in the magistrates' court;

the Court must not create or give the appearance of judicial pressure being placed on a defendant so as to promote a guilty plea.

In the Crown Court

9.4.2 An indication may be sought only when: (a) the plea is entered on the full facts of the prosecution case; or (b) a written basis of plea is agreed by the prosecution; or (c) if there is an issue between the prosecution and the defence, this is properly identified and the judge is satisfied that the issue is not material and does not require a *Newton* hearing to resolve.

9.4.3 Any advance indication given should be of 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.

9.4.4 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.

9.4.5 The judge has a discretion whether to give a *Goodyear* indication, and whether to give reasons for a refusal. If there is a dispute as to the basis of plea, such indications should not normally be given unless the judge concludes a *Newton* hearing is not required. 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.[136]

9.4.6 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.

9.4.7 There should be no prosecution opening nor should the judge hear mitigation. However, during the *Goodyear* application 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. Where appropriate, the prosecution should refer to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court requires.

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[135] For the relevant principles see **CrimPR 3.31 (application for indication of sentence)** and *R v Goodyear* [2005] EWCA Crim 888

[136] See paragraph 9.3.3 above.

9.4.8 The prohibition against the Crown indicating its approval of a particular sentence applies in all circumstances when a defendant is being sentenced, including when the defence seeks a *Goodyear* indication or when joint sentencing submissions are made.

9.4.9 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.

In the magistrates' court

9.4.10 In accordance with **CrimPR 3.16** the defendant may seek an indication of whether a custodial or non-custodial sentence is more likely in the event of a guilty plea being forthcoming there and then.

9.4.11 If the defendant asks the court for such an indication, the prosecutor must:

a. provide any information relevant to sentence not yet served but which is available; and

b. identify any other matter relevant to sentence, including the legislation applicable, any sentencing guidelines or guideline cases and aggravating and mitigating factors.

9.4.12 The court is not obliged to give such an indication.

9.5 Victim personal statements

9.5.1 Victims of crime are invited to make a Victim Personal Statement (VPS).[137] 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.

9.5.2 The decision about whether or not to make a VPS is entirely a matter for the victim; no pressure should be brought to bear, and no conclusion should be drawn if no statement is made. A VPS, or a further VPS, may be made at any time prior to the disposal of the case. A VPS after disposal is an exceptional step, should be confined to presenting up to date factual material, such as medical information, and should be used sparingly, most usually in the event of an appeal.

9.5.3 Evidence of the effects of an offence on the victim contained in the VPS or other statement, must be:

a. in a witness statement made under s.9 Criminal Justice Act 1967 or an expert's report; and

b. served in good time upon the defendant's solicitor or the defendant, if they are not represented.

[137] The revised Code of Practice for Victims of Crime 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.

9.5.4 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.

9.5.5 The maker of a VPS may be cross-examined on its content.

9.5.6 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 include the inadmissibility of the content or the potentially harmful consequences for the victim or others.

9.5.7 Court hearings should not be adjourned solely to allow the victim to attend court to read the VPS. A VPS that is read aloud or played in open court in whole or in part ceases to be a confidential document. The VPS should be referred to in the course of the hearing.

9.5.8 The opinions of the victim or the victim's relatives as to what the sentence should be are not relevant, unlike the consequences of the offence on them, and should therefore not be included in the statement. If opinions as to sentence are included in the statement, then it is inappropriate for them to be referred to, and the court should have no regard to them.

Victims and others affected by serious crime

9.5.9 The court must have regard to those directly affected by serious crime. This applies to victims and those connected to them. The Code of Practice for Victims of Crime lists a range of people who are entitled to enhanced rights. Regard must be had to the needs of victims, their families and people connected to them. The trial process must not expose them to avoidable intimidation, humiliation or distress.

9.5.10 In so far as it is compatible with their status, if any, as witnesses, the court should consider the following measures:

a. Practical arrangements being 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. The provision of a warning if the evidence on a certain day is expected to be particularly distressing.

c. Ensuring appropriate use of Victim Personal Statements.

Impact statements for businesses

9.5.11 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), 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.

9.5.12 An ISB, or an updated ISB, may be made at any time prior to the disposal of the case. It will rarely be appropriate for an ISB to be made after disposal of the case but before an appeal.

9.5.13 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, as for example a director or owner or a senior official, or by having been suitably authorised 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.

9.5.14 The ISB must be made in proper form, that is:

a. as a witness statement made under s.9 Criminal Justice Act 1967 or an expert's report; and

b. served in good time upon the defendant's solicitor or the defendant, if they are not represented.

9.5.15 The maker of an ISB can be cross-examined on its content.

9.5.16 The ISB and any evidence in support should be taken into account by the court, prior to passing sentence. The ISB should be referred to in the course of the hearing. Subject to the court's discretion, the contents of the statement may be summarised or read in open court. The views of the business or body should be taken into account in reaching a decision.

9.5.17 Opinions expressed as to what the sentence should be are not relevant. If opinions as to sentence are included in the statement, the court should have no regard to them and make no reference to them.

9.5.18 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.

Community impact statement

9.5.19 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. Such statements must be made under s.9 Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if they are not represented.

9.5.20 The maker of such a statement can be cross-examined on its content.

9.5.21 A 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.

9.5.22 Account may be taken of such material but any opinions expressed in the documents as to what the sentence should be are not relevant, should not be referred to and the court should pay no attention to them.

9.5.23 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 offending on the local community.

9.6 Sentencing remarks in the Crown Court

9.6.1 The provision of written sentencing remarks can be helpful, for example in the context of homicide, serious sexual offences or in the case of a young or otherwise vulnerable defendant, and is to be encouraged.

9.7 Variation of sentence

9.7.1 Where the Court varies sentence under s.142 Magistrates' Courts Act 1980 or s.385 Sentencing Act 2000 as appropriate, the making of the decision and the reasons for that decision always must be announced at a public hearing.[138]

[138] See **CrimPR 28.4(1)(b)**.

10. APPEALS TO THE COURT OF APPEAL (CRIMINAL DIVISION)

10.1 Guide to the commencement of proceedings in the Court of Appeal Criminal Division

10.1.1 Parties must comply with the guidance set down by the Registrar in the Court of Appeal Office guide.

10.2 Against conviction and sentence – the provision of notice to the prosecution

10.2.1 On receipt of an appeal notice,[139] the Registrar of Criminal Appeals will notify the relevant prosecution authority, giving the case name, reference number and the trial or sentencing court.

10.2.2 If the court or the Registrar directs, or invites, the prosecution authority to serve a respondent's notice,[140] 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.

10.2.3 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.

10.2.4 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.

10.2.5 The prosecution should notify the Registrar without delay if they wish to be represented at the hearing. Prosecutors should be aware that the case may be listed at short notice.

10.2.6 If the prosecution wishes to be represented at any hearing, the notification should include details of the advocate instructed and a time estimate.

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[139] Served under **CrimPR 39.2**.
[140] Under **CrimPR 39.6**.

10.2.7 In a renewed application for leave to appeal sentence that involves a fatality, where the prosecution is not represented and leave is granted, the court must consider adjourning the hearing so that the CPS may instruct an advocate, and the victim's family be given the opportunity to attend.

10.3 Listing of appeals against conviction and sentence in the Court of Appeal Criminal Division (CACD)

10.3.1 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 are deemed necessary.

10.3.2 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.

10.3.3 Similarly, when the Registrar directs that an appellant should appear by live link, the prison must give precedence to live links to the Court of Appeal over live links to the lower courts, including the Crown Court.

10.3.4 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 seven 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.

10.3.5 The following target times are set for the hearing of appeals (subject to variation for vacations or expedited cases). Target times will run from the receipt of the appeal by the Listing Officer, as being ready for hearing.

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

10.3.6 'Appeal' includes an application for leave to appeal which requires an oral hearing.

10.4 Appeal notices containing grounds of appeal

10.4.1 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.[141] The grounds must:

a. be concise;

b. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing;

c. include in the appeal notice electronic links to relevant documents/digital evidence, identifying with particularity the sections of any such material the court needs to consider as well as where and how that is to be found.[142]

10.4.2 Defective grounds will be returned for revision within a directed period. Failure to revise might lead to the court refusing leave.

10.4.3 Where the appellant wants to appeal against conviction, transcripts must be identified.[143]

10.4.4 Fresh representatives must comply with the duty of due diligence explained in *R v McCook.*[144] To ensure compliance with this duty:

a. New legal representatives must confirm within the grounds of appeal that the duties set out in *McCook* and associated authorities have been complied with.

b. If privileged information is included within, or as an attachment, to the grounds of appeal (including but not limited to, explicit or implied complaints about the conduct of trial representatives), then a signed waiver of privilege must also be lodged with the grounds of appeal.

c. If trial representatives fail to respond to inquiries within a reasonable time, fresh representatives should instead seek other objective independent evidence to substantiate the factual basis for the grounds as far as they are able. A statement confirming that the trial representatives have failed to respond to their *McCook* inquiries must be lodged with the grounds of appeal, along with a signed waiver of privilege.

d. Fresh representatives must consider obtaining other objective independent evidence if the information provided by the trial representatives contradicts the appellant's instructions.

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[141] In accordance with **CrimPR 39.3**.
[142] See **CrimPR 39.3(1)(f) & (g),** which in practice distinguish between documents on DCS and authorities in law reports.
[143] In accordance with **CrimPR 39.3(1)(c)**.
[144] [2014] EWCA Crim 734

e. A signed waiver of privilege must also be lodged by new legal representatives in all fresh evidence cases, following the guidance in *R v Singh*.[145]

10.4.5 Where the appellant wants to rely on a ground of appeal that is not identified by the appeal notice, an application[146] is required. In *R v James and Others*[147] the Court of Appeal identified as follows the considerations that pertain 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 s.31 Criminal Appeal Act 1968 is an important stage in the process. It must 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,[148] the appellant or their 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 **CrimPR**.

d. On the assumption that an appellant will have received advice on appeal from the 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 *R v McCook.*[149] Waiver of privilege by the appellant is very likely to be required.

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[145] [2017] EWCA Crim 466
[146] Under **CrimPR 36.14(5)**.
[147] [2018] EWCA Crim 285
[148] On an application under **CrimPR 36.14(5)**.
[149] [2014] EWCA Crim 734

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,[150] transcripts relevant to the fresh grounds and, where required, a respondent's notice relating to the fresh grounds.

e. While an application[151] will not require 'exceptional leave', and hence the demonstration of substantial injustice, the hurdle for the applicant is a high one nonetheless. A representation order would not usually be granted for such an application.

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. Where a Court refuses a renewed application for permission to appeal,[152] it has the power to make a loss of time order or an order for costs in line with *R v Gray and Others*.[153] In that case the court said it would consider doing so when faced with an unmeritorious application, particularly if the single judge had given such an indication. By analogy with *R v Kirk*[154] (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.

10.4.6 Applications must be lodged at the following address: applications@criminalappealoffice.justice.gov.uk.

10.5 Loss of time

10.5.1 Both the Court and the single judge have power, in their discretion, under the Criminal Appeal Act 1968 ss.29 and 31, to direct that part of the time during which an applicant is in custody after lodging their notice of application for leave to appeal should not count towards sentence.[155]

10.6 Criminal Appeal Office summaries

10.6.1 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

[150] Under **CrimPR 36.14(5)**.
[151] Under **CrimPR 36.14(5)**.
[152] Under **CrimPR 36.14(5)**.
[153] [2014] EWCA Crim 2372
[154] [2015] EWCA Crim 1764
[155] See on the loss of time orders *R v Gray and Others* [2014] EWCA Crim 2372

merits. They consist of two Parts, which may be combined in a single document.

10.6.2 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.

10.6.3 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.

10.6.4 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.

10.6.5 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.

10.6.6 Part II, which is supplied to the Court alone, unless combined in a single document, contains:

a. a summary of or electronic link to the grounds of appeal; and

b. in appeals against sentence (and applications for such leave), summaries of or electronic links to the antecedent histories of the parties and of any relevant pre-sentence, medical or other reports.

10.6.7 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.

10.7 Criminal Appeal Office bundles and indexes for full court hearings

10.7.1 To assist the Full Court, the Criminal Appeal Office will, save where the summary is comprised of a single document, prepare an index to the bundle containing electronic links to the documents and material which the Registrar considers necessary to understand and determine the appeal for

each member of the constitution. In exceptional circumstances, paper bundles may be provided.

10.7.2 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 may be granted by the Court or the Registrar for this purpose.

10.7.3 Where digital or paper 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.

10.7.4 Bundles lodged in response to a direction to do so, or of an advocate's own volition, should, wherever possible, be provided in pdf format with OCR (optical character recognition). All significant documents and all sections in bundles must be bookmarked for ease of navigation, with an appropriate description as the bookmark. An index or table of contents of the documents should be prepared. If practicable entries should be hyperlinked to the indexed document. Where, exceptionally, paper bundles are necessary 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. Bundles whether digital or paper 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.

10.8 Skeleton arguments and citation of authorities

10.8.1 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.

10.8.2 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.

10.8.3 Subject to any direction given by the court a skeleton argument[156] must:

a. contain a numbered list of the points the advocate intends to argue, these should be grouped under each ground of appeal, and stated in no more than one or two sentences;

[156] These requirements, save where specific to appeals, apply equally to skeleton arguments served in any proceedings to which the Practice Direction has application.

b. be as succinct as possible;

c. at the beginning of any document state the correct Criminal Appeal Office number and the date on which the document was served, and conclude with the advocates' names;

d. define the issues;

e. not normally exceed 15 pages (excluding front sheets and back sheets) and be concise;

f. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing;

g. be set out in numbered paragraphs;

h. be cross-referenced to any relevant document in any bundle prepared for the court;

i. be self-contained;

j. not include extensive quotations from documents or authorities.

10.8.4 Where it is necessary to refer to an authority, the skeleton argument must:

a. cite the neutral citation number followed by the appropriate law report (taking the first in the hierarchy of law reporting should the case be reported in more than one place);[157] and

b. state the proposition of law the authority demonstrates; and

c. identify but not quote the parts of the authority that support the proposition.

10.8.5 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.

10.8.6 A chronology of relevant events will be necessary in most cases.

10.8.7 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 this Practice Direction (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.

10.8.8 The Criminal Appeal Office may refuse to accept service of a document that fails to comply with the requirements in these Directions and may return that document to the advocate for amendment.

[157] Recognised hierarchy of law reporting: first, Official Law Reports (AC, QB, Ch, Fam) produced by the Incorporated Council of Law Reporting for England and Wales); second, All England Law Reports (All ER) or the Weekly Law Reports (WLR); third, authoritative specialist reports, which contain a headnote and are made by individuals holding a Senior Courts qualification; fourth, a judgment not reported in any of the reports listed above, but reported in other reports; fifth, an official transcript. The hierarchy of reporting applies in all courts to which the Practice Direction has application.

Citation of authority

10.8.9 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. The court is most unlikely to be prepared to look at an authority which does no more than illustrate or restate an established proposition.

10.8.10 Where a definitive Sentencing Council guideline is available, authorities decided before the issue of the guideline, and authorities after its issue which do not refer to it, will rarely be of assistance. An authority that does no more than uphold a sentence imposed at the Crown Court is unlikely to assist the court in deciding whether a sentence is manifestly excessive or wrong in principle.

10.8.11 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.

10.8.12 The following practice should be followed:

a. 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.

b. 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 s.115 Courts and Legal Services Act 1990), that report should be cited.

c. Where a judgment is not reported in any of the reports referred to above, but is reported in other reports, they may be cited.

d. 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.

Provision of copies of judgments to the court

10.8.13 An electronic copy of any authority should be provided. Where there is more than one authority, they should be provided in a single electronic document.[158]

10.8.14 Authorities bundles should, wherever possible, be provided in pdf format with OCR (optical character recognition). All significant documents and all

[158] See **CrimPR 39.3(1)(g)**.

sections in bundles must be bookmarked for ease of navigation, with an appropriate description as the bookmark. An index or table of contents of the documents should be prepared. If practicable entries should be hyperlinked to the indexed document.

10.8.15 In providing materials for the Court, advocates should follow the detailed guidance issued by the Registrar of Criminal Appeals: The Court of Appeal Division Guide to Commencing Proceedings (2021).

Citation of Hansard

10.8.16 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*[159] and *Pickstone v Freemans PLC*,[160] or otherwise, they 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.

10.8.17 Unless the court otherwise directs, service of the extract and summary of the argument shall be effected not less than five 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 electronically to the Registrar of Criminal Appeals.[161] 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.

10.9 Availability of judgments of the Court of Appeal

Availability of reserved judgments before handing down, corrections and applications consequential on judgment

10.9.1 Where judgment is to be reserved the Presiding Judge will, at the conclusion of the hearing, invite the views of the parties' legal representatives (or of a party, if unrepresented) as to the arrangements to be made for the handing down of the judgment.

10.9.2 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.

10.9.3 The court will provide a copy of the draft judgment to the parties' legal representatives (or of a party, if unrepresented) 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.'

[159] [1993] AC 593
[160] [1989] AC 66
[161] At the address advertised by HMCTS.

10.9.4 The draft is supplied in confidence and on condition 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 in response to the draft judgment (other than by the parties' legal representatives, or by a party if unrepresented, for the purpose of complying with para 10.9.5 or 10.9.6), before the judgment is handed down.

10.9.5 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.

10.9.6 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 s.34 Criminal Appeal Act 1968, the time limit for such applications is 28 days.

Communication to the parties including the defendant or the victim

10.9.7 The contents of the draft judgment must 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.

10.9.8 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.

10.9.9 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).

10.9.10 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.

10.9.11 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

10.9.12 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 ss.45 or 45A YJCEA 1999, or any other form of restriction on disclosure, or reporting, of information in the judgment.

10.9.13 Copies of the approved judgment can be ordered from the official shorthand writers, on payment of the appropriate fee.

11. INVESTIGATIVE ORDERS

11.1 Investigation orders and warrants

11.1.1 If an application is supplemented by oral or written information, on questioning by the court or otherwise, the court must keep a record in or annexed to the application form. If a sensitive information supplement is supplied and is not retained by the applicant,[162] this must be kept securely.

11.1.2 There are many powers of entry, search and seizure. If no application form has been issued for the warrant or order sought, another form should be adapted. The applicant must give the information required by the relevant legislation. If the court may be unfamiliar with that legislation then the applicant must provide a copy.

11.1.3 Wet ink judicial signatures are never needed.[163]

11.2 Investigation orders and warrants in the Crown Court

11.2.1 This section covers applications made under:

a. Schedule 1 PACE 1984;

b. Section 2 Criminal Justice Act 1987;

c. Drug Trafficking Act 1994;

d. Part 8 Proceeds of Crime Act 2002;

e. Schedule 5 Coroners and Justice Act 2009;

f. Terrorism Act 2000.

11.2.2 It does **not** cover applications under the Extradition Act 2003, which are dealt with at Westminster Magistrates' Court or the High Court only.

Crown Court Centres

11.2.3 Investigators must give careful consideration to which Crown Court centre is most appropriate to hear the application, which must explain the rationale for choosing it. Relevant considerations include:

a. where any subsequent proceedings are likely to be commenced;

b. where a main suspect has some geographical connection; and/or

c. where, in broad terms, the offending has taken place.

11.2.4 A court centre must not be chosen simply because it is most convenient or proximate to the investigator's location. Disputes over the proper venue for an application must be determined by the relevant Presiding Judges.

11.2.5 Where the investigation is complex, lengthy and/or involves multiple suspects, all applications must be made to one court centre. To ensure consistency, all subsequent applications arising out of the same or any

[162] See **CrimPR 47.3(1)**.
[163] **CrimPR 47.27(3)**.

connected investigation must be made to the same court centre and, where practicable, the same judge.

11.2.6 Judges can refuse to determine applications and request they be resubmitted (if necessary to another court) where:

a. the application is not in the proper form;

b. there is an inaccurate reading time estimate; and/or

c. there is insufficient justification for the application to be made at that court centre.

Investigation Orders

11.2.7 Applications for investigation orders (e.g. production orders) can be determined without a hearing and, therefore, in the absence of the applicant.[164]

11.2.8 When permitted by the rules, and where the application has been 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, or for any other reason.

11.2.9 It may not be appropriate for a court to deal with an application without a hearing in the following situations, subject to judicial discretion:

a. Where the investigation involved covert activity or the application is based on material gathered covertly.

b. 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.

c. Where the case may result in substantial local and/or national public interest.

d. Where the application is particularly lengthy, serious or complex.

e. Where the application appears to relate to something akin to excluded material[165] such as sensitive personal records, or medical information.

11.2.10 Applications should be sent electronically to the designated secure email address at the relevant court centre.

11.2.11 Approved orders will be returned electronically to the applicant and an electronic copy must be securely saved by the court.

Investigation warrants

11.2.12 Applications for warrants must be heard with the applicant in attendance,[166] although that hearing can be by live link (including telephone).[167]

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[164] **CrimPR 47.5(1)(a)**.
[165] PACE s.11.
[166] **CrimPR 47.25(1)(a)**.
[167] **CrimPR 47.25(2)**.

11.2.13 If the judge refuses the application, the judge may require further information. The Court will inform the applicant of the outcome and make necessary arrangements for any additional hearings that may be required.

11.2.14 If there is a particular urgency with any application, that fact should be made clear to the Court.

11.2.15 There is no requirement for any warrant to be signed by the judge with a 'wet ink' signature. An electronic record of any warrants that are made will be sent to the applicant.

Listing

11.2.16 To assist the listing process, the applicant must supply a realistic estimate of the reading time required. 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 also 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.

11.2.17 The covering email should 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.

11.2.18 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 and retained.

12. EXTRADITION

12.1 General matters and case management

General matters: expedition; Brexit developments

12.1.1 Extradition proceedings must be dealt with expeditiously, and in accordance with the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('TCA') of the 24 December 2020 as amended, and where applicable the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ('Framework Decision').

12.1.2 Following the United Kingdom's exit from the European Union, the applicable surrender procedure will depend on whether the requested person was arrested pursuant to a European Arrest Warrant (EAW) before 31 December 2020. If so, the Framework Decision and the Extradition Act 2003 continue to apply in unamended form.[168] If not, a new system of surrender provided for in Title VII of Part 3 of the TCA and based on the new arrest warrant procedure will apply, as provided for in the amended Extradition Act 2003.

12.1.3 Part 3 of the TCA provides for ongoing law enforcement and judicial cooperation in criminal matters.[169]

12.1.4 Westminster Magistrates' Court directions must be followed. In particular:

a. the court will give model case management directions, adapted to each individual case. These require parties to supply case management information, consistent with the overriding objective of the Criminal Procedure Rules;

b. a requested person must identify issues at the first hearing so directions can be given to achieve a single, effective extradition hearing at the earliest possible date;

c. if further information from the requesting authority is needed, the request must be formulated clearly and early, in comprehensible terms to ensure a prompt response;

d. where such a request or other document, including a formal notice to the requested person of a post-extradition consent request, requires transmission to a requesting state, clear and realistic directions for transmission must be given and complied with. The court must be informed immediately of difficulties;

e. skeleton arguments must comply with these Practice Directions and court directions. (10.8 sets out the general requirements for skeleton

[168] *Polakowski v WMC and various Judicial Authorities* [2021] EWHC 53 (Admin)
[169] Pages 312-329 in particular deal with Surrender (Title VII) and Mutual Assistance (Title VIII).

arguments. Paragraphs 12.3.1 to 12.3.29 set out special requirements that apply to extradition appeals to the High Court.)

12.2 General guidance under s.2(7A) Extradition Act 2003 (as amended)

12.2.1 When considering under s.21A(3)(a) of the Act the seriousness of 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 paragraph 12.2.2 below.

12.2.2 Where the conduct alleged to constitute the offence falls into one of the categories in the table at paragraph 12.2.4 below, unless there are exceptional circumstances, the judge should generally determine that extradition would be disproportionate. It follows under the terms of s.21A(4)(b) of the Act that the judge must order the person's discharge.

12.2.3 The exceptional circumstances referred to above in paragraph 12.2.2 include:

a. vulnerable victim;

b. crime committed against someone because of their disability, gender-identity, race, religion or belief, or sexual orientation;

c. significant premeditation;

d. multiple counts;

e. extradition also sought for another offence;

f. previous offending history.

12.2.4 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.

Category of offence	Examples
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 a 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.

12.3 Management of appeal to the High Court

12.3.1 Applications for permission to appeal to the High Court under the Extradition Act 2003 must be started in the Administrative Court of the King's Bench Division at the Royal Courts of Justice in London.

12.3.2 A Lord or Lady Justice of Appeal ('LJ') appointed by the Lord Chief Justice will have responsibility to assist the President of the King's Bench Division with overall supervision of extradition appeals.

Definitions

12.3.3 The following definitions apply in this part:

a. Where appropriate 'appeal' includes 'application for permission to appeal'.

b. 'EAW' means European Arrest Warrant, and for the purpose of this direction should be read as synonymous with Arrest Warrants 'AW' under the TCA (although the distinctions in law should be noted).

c. 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**.

Forms

12.3.4 All application notices are made using form EX244.

12.3.5 The forms are to be used in the High Court, in accordance with **CrimPR 50.19**, **50.20**, **50.21** and **50.22**.

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

Management of the Appeal

12.3.7 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.

12.3.8 The power to extend those time limits may be exercised by an LJ, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

12.3.9 Case management directions setting down a timetable may be imposed upon the parties by an LJ, 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 s.4 Senior Courts Act 1981 and **CrimPR 50.18 and 50.30**.

Listing of Oral, Renewal and Substantive Hearings

12.3.10 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.

12.3.11 An LJ, 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.

12.3.12 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.

12.3.13 If a party disagrees with the time estimate given by the court, they must inform the Listing Office within five business days of the notification of the listing and they must provide a time estimate of their own.

Expedited appeals

12.3.14 The court may direct that the hearing of an appeal be expedited.

12.3.15 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[170] and notice must be given to the other parties.

12.3.16 Any requests for an expedited appeal made to an out of hours judge must be accompanied by:

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.

Applications to vary notices

12.3.17 Any amendment to an appellant's or respondent's notice must be authorised by the Court in accordance with **CrimPR 50.17(6)(b)**:

a. An application for permission to amend made before permission to appeal has been considered will be determined without a hearing.

b. 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 timely applications for such an amendment is likely to result in refusal.

c. Legal representatives or the appellant, if acting in person, must:

i. inform the court at the time they make the application if the existing time estimate is affected by the proposed amendment; and

ii. attempt to agree any revised time estimate no later than five business days after service of the application.

Out of time Renewals

12.3.18 Where an application for an extension of time to file a notice of renewal is refused (whether at a hearing or on paper), there is no jurisdiction for the court to entertain a renewed application at an oral hearing.

12.3.19 In such circumstances, the appellant may ask the court to reopen the application for permission to appeal, pursuant to the exceptional jurisdiction in **CrimPR 50.27**.[171]

Use of live links

12.3.20 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

[170] crimex@administrativecourtoffice.justice.gov.uk.

[171] *Oleantu-Urshache v Judecatoris Bacau, Romania and Majewski v Polish Judicial Authority* [2021] EWHC 1437

applications in the High Court over live links to the lower courts, including the Crown Court.

Interpreters

12.3.21 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.

12.3.22 Where a party who does not understand or speak English is legally represented it is the responsibility of that party's solicitors to instruct an interpreter if required for any hearing in extradition proceedings.

Disposing of applications and appeals by way of consent

12.3.23 **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 ss.36 or 118, as the case may be, Extradition Act 2003: whether that is to be the date on which the order is made or some later date.

12.3.24 A Consent Order may be approved by an LJ, 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.[172] Once approved, the order will be sent to the parties and to any other person as required by **CrimPR 50.29(3)(b), (c)**.

12.3.25 A Consent Order to allow an appeal brought under s.28 Extradition Act 2003 must provide:

a. for the quashing of the decision of the District Judge in Westminster Magistrates' Court discharging the Requested Person;

b. for the matter to be remitted to the District Judge to hold fresh extradition proceedings;

c. for any ancillary matter, such as bail or costs.

12.3.26 A Consent Order to allow an appeal brought under s.110 Extradition Act 2003 must provide:

a. for the quashing of the decision of the Secretary of State for the Home Department not to order extradition;

b. for the matter to be remitted to the Secretary of State to make a fresh decision on whether or not to order extradition;

c. for any ancillary matter, such as bail or costs.

12.3.27 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

[172] **CrimPR 50.17(1)(c)(iii)**.

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 **r.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

12.3.28 Applications to extend Representation Orders do not attract any fee.

12.3.29 Fees are payable for all other applications in accordance with the current Fees Order.

12.4 Representation Orders

12.4.1 Representation Orders may be granted by an LJ, 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 a junior advocate and solicitors for the preparation of the Notice of Appeal to determination of the appeal.

12.4.2 Applications to extend Representation Orders may be granted by an LJ, 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 an LJ, 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.

12.4.3 Applications to extend Representation Orders to cover the instruction of King'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.[173]

12.4.4 The request must:

a. identify the substantial novel or complex issues of law or fact in the case;

b. explain why these may only be adequately presented by a King's Counsel;

c. state whether a King's Counsel has been instructed on behalf of the respondent;

d. explain any delay in making the request;

e. be supported by advice from a junior advocate or King's Counsel.

[173] crimex@administrativecourtoffice.justice.gov.uk.

12.4.5 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.

12.4.6 The request must:

a. confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;

b. explain why the evidence was not called at the extradition hearing in Westminster Magistrates' Court and what evidence can be produced to support that;

c. 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;

d. 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;

e. 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;

f. state when the need for the new evidence first became known;

g. explain any delay in making the request;

h. explain what relevant factual, as opposed to expert evidence, is being given by whom to create the factual basis for the expert's opinion;

i. explain why this particular area of expertise is relevant: for example why a child psychologist should be appointed as opposed to a social worker;

j. state whether the requested person has capacity;

k. 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;

l. provide a list of all previous extensions of the Representation Order and the approval of expenditure to date;

m. provide a timetable for the production of the evidence and its anticipated effect on the time estimate and hearing date;

n. set out the level of compliance to date with any directions order.

12.4.7 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.

12.4.8 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 ss.27(4) and 29(4) Extradition Act 2003 and the judgment in *Szombathely City Court v Fenyvesi*.[174]

12.4.9 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 the Administrative Court Office.[175]

12.4.10 The request should:

a. explain the importance of the document for which a translation is being sought and the justification for obtaining it;

b. 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;

c. confirm that the evidence sought has not been considered in any previous appeals determined by the appellate courts;

d. confirm that the evidence sought was not called at the extradition hearing in Westminster Magistrates' Court;

e. 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;

f. confirm that the new evidence was not raised when the case was being considered by the Secretary of State for the Home Department;

g. 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;

h. confirm when the need for the new evidence first became known;

i. explain any delay in making the request;

j. explain fully the evidential basis for incurring the expenditure;

k. explain why the appellant cannot produce the evidence themselves in the form of a statement of truth;

l. set out a full breakdown of all costs involved including any VAT or other tax payable and the Legal Aid Agency contractual rates;

m. provide a list of all previous extensions of the Representation Order and the expenditure to date.

12.4.11 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

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[174] [2009] EWHC 231 (Admin)

[175] The Royal Courts of Justice, Strand, London, WC2A 2LL or emailed to the appropriate email address crimex@administrativecourtoffice.justice.gov.uk.

admitted at the hearing of the appeal having regard to ss.27(4) and 29(4) Extradition Act 2003 and the judgment in *Szombathely City Court v Fenyvesi*.[176]

12.5 Applications, etc

12.5.1 Extension or abridgement of time:

a. 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.

b. Applications for extension or abridgment of time may be determined by an LJ, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

c. 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.

d. Any application made to an out of hours judge must be accompanied with:

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.

Representatives

12.5.2 **CrimPR Part 46** applies. Where under **CrimPR 46.2(1)(c)** a legal representative withdraws from the case then that representative should satisfy themselves that the requested person 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 requested person is so aware then they should promptly notify the Administrative Court Office.[177]

12.5.3 A legal representative must provide details of any arrangements likely to be required by the Requested Person to facilitate their participation in consequence of the representative's withdrawal, including arrangements for interpretation.[178]

Application to adjourn

12.5.4 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:

a. explain the reasons why an application is being made to vacate the hearing;

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[176] [2009] EWHC 231 (Admin)
[177] This may be filed by email to crimex@administrativecourtoffice.justice.gov.uk.
[178] **Crim PR 46.2(1)(c)**.

b. detail the views of the other parties to the appeal;

c. include a draft order with the application notice.

12.5.5 If the parties both seek an adjournment then the application must be submitted for consideration by an LJ, 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.

12.5.6 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

12.5.7 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, to be submitted on the appropriate form, must:

a. provide full and proper explanations for why the current and existing directions have not been complied with;

b. detail the views of the other parties to the appeal;

c. include a draft order setting out in full the timetable and directions as varied i.e. a superseding order which stands alone;

d. if the application is made to an out of hours judge it 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.

12.5.8 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

12.5.9 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.

12.5.10 Any response to the application must be made within 10 business days.

12.5.11 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.

12.5.12 The representation order may be extended by an LJ, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

12.5.13 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 one hour before the pronouncement is made in open court.

12.5.14 There shall be no public announcement of the result until after it has been formally pronounced.

Application to reopen the determination of an appeal

12.5.15 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 s.36 Extradition Act 2003

12.5.16 Where an application is made for an extension of the required period within which to extradite a Requested Person it must be accompanied by:

a. a witness statement explaining why it is not possible to remove the Requested Person within the required period and the proposed timetable for removal;

b. a draft order.

12.5.17 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.

12.5.18 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.

12.5.19 The application may be determined by an LJ, 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 ss.42 or 124 Extradition Act 2003

12.5.20 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:

a. the notification by the requesting state that the EAW has been withdrawn together with a translation of the same;

b. a witness statement containing:

i. details of whether the withdrawn EAW is the only EAW outstanding in respect of the Requested Person;

ii. details of other EAWs outstanding in respect of the Requested Person and the stage which the proceedings have reached;

iii. whether only part of the EAW has been withdrawn;

iv. details of any bail conditions;

v. details of any institution in which the Requested Person is being detained, the Requested Person's prison number and date of birth.

12.5.21 The order for discharge may be made by an LJ, a Single Judge of the High Court, a Master of the Administrative Court or a nominated legal officer of the court.

12.5.22 It is the responsibility of the High Court to serve the approved order on the appropriate institution and Westminster Magistrates' Court.

12.6 Court papers

Skeleton arguments

12.6.1 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. Unless the court has ordered otherwise:

a. the appellant's skeleton argument for an oral permission hearing must be filed and served not less than 7 days before the date of the hearing;

b. the appellant's skeleton argument for a final or rolled-up hearing must be filed and served not less than 14 days before the date of the hearing; and

c. the respondent's skeleton argument for a final or rolled-up hearing must be filed and served not less than 7 days before the date of the hearing.

12.6.2 Strict compliance is required with all time limits.

12.6.3 A skeleton argument must:

a. be concise, and in any event shall not, save with the permission of the court, exceed 10 pages (excluding front sheets and back sheets);

b. be printed on A4 paper in not less than 12 point font and 1.5 line spacing;

c. define the issues in the appeal;

d. be set out in numbered paragraphs;

e. be cross-referenced to any relevant document in the bundle;

f. be self-contained and not incorporate by reference material from previous skeleton arguments;

g. not include extensive quotations from documents or authorities.

12.6.4 Where it is necessary to refer to an authority, the skeleton argument must:

a. state the proposition of law the authority demonstrates; and

b. identify but not quote the parts of the authority that support the proposition.

12.6.5 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.

12.6.6 A chronology of relevant events will be necessary in most appeals.

12.6.7 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 seven business days before the hearing of the appeal.

12.6.8 At the hearing the court may refuse to hear argument on a point not included in a skeleton argument filed within the prescribed time.

Hearing bundles

12.6.9 The hearing bundle 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.

12.6.10 The hearing bundle must be prepared in electronic form in accordance with the Guidance on the Administrative Court website.

12.6.11 The hearing bundle must be paginated and indexed. It should only contain relevant documents and must not include duplicate documents.

12.6.12 Subject to any order made by the court, the following documents must be included in the appeal bundle:

a. the Notice of Appeal and Grounds, or Application Notice and grounds;

b. documents regarded as essential to the appeal, or application (for example the extradition request, the judgment of the District Judge, the Respondent's Notice etc.);

c. any witness statements (or primary witness statement) relied on in support of the appeal or application; and

d. a draft of the order the court is asked to make.

12.6.13 Hearing bundles should not exceed 20mb. If the documents required for the hearing exceed this size, the parties should prepare a core bundle containing the documents referred to at paragraph 12.6.12 above, and a further bundle (or bundles, none to exceed 20mb) containing the remaining documents. The appellant shall if requested by the Court, lodge a hard-copy version of the Hearing Bundle and/or the Authorities Bundle. The pagination of any hard-copy version must be the same as the pagination of the electronic bundle.

12.6.14 Hearing bundles must be lodged in accordance with the directions given by the court. In default of such directions:

a. the hearing bundle for a renewal application must be lodged within 14 days of the date of the letter from the List Office confirming receipt of the renewed application for permission to appeal;

b. the hearing bundle for a final or rolled-up hearing must be lodged 14 days before the date of the hearing.

12.6.15 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.

Authorities

12.6.16 A list of 'Frequently cited authorities' is published on the Administrative Court website. Copies of authorities on this list need not be provided to the judge hearing the application/appeal. Parties may assume that the judge will have a copy of the judgment; if any of these authorities is relied on parties need only cite the case and the relevant paragraph number(s).

12.6.17 Parties wishing to rely on any other authority must provide a copy of the case to the court in advance of the hearing. If the authority has been reported (for example in the Law Reports or All England Reports) parties must refer to and provide the reported version of the judgment in preference to a transcript of the judgment.

12.6.18 Unless the court has directed otherwise:

a. authorities bundles containing all authorities to be relied on (save for those in the list of frequently cited authorities) must be lodged no later than 7 days prior to the date set for the hearing of the application/appeal; and

b. all authorities bundles must be in electronic form and be prepared in accordance with the Guidance on the Administrative Court website.

12.7 Consequences of non-compliance with directions

12.7.1 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.

12.7.2 Judges dealing with extradition appeals will seek full and proper explanations for any breaches of the rules and the provisions of this Practice Direction.

12.7.3 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 King's Bench Division with a recommendation that the counsel or solicitors involved be reported to their professional bodies.

12.7.4 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.

12.7.5 A failure to comply with the time limits or other requirements for skeleton arguments will have the consequences specified in paragraph 12.6.8.

13. CASE MANAGEMENT OF TERRORISM CASES

13.1 Application

13.1.1 For the purposes of this Practice Direction 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 s.1 Terrorism Act 2000. This may include, but is not limited to:

i. murder;

ii. manslaughter;

iii. an offence under s.18 Offences against the Person Act 1861 (wounding with intent);

iv. an offence under s.23 or 24 of that Act (administering poison etc);

v. an offence under s.28 or 29 of that Act (explosives);

vi. an offence under ss.2, 3 or 5 Explosive Substances Act 1883 (causing explosions);

vii. an offence under s.1(2) Criminal Damage Act 1971 (endangering life by damaging property);

viii. an offence under s.1 Biological Weapons Act 1974 (biological weapons);

ix. an offence under s.2 Chemical Weapons Act 1996 (chemical weapons);

x. an offence under s.56 Terrorism Act 2000 (directing a terrorist organisation);

xi. an offence under s.59 of that Act (inciting terrorism overseas);

xii. offences under (v), (vii) and (viii) above given jurisdiction by virtue of s.62 of that Act (terrorist bombing overseas); and

xiii. an offence under s.5 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 s.1 Terrorism Act 2000, and the prosecutor gives a notice under s.51B Crime and Disorder Act 1998 (Notices in serious or complex fraud cases);

c. one of the offences charged is indictable only, and includes an allegation that a defendant conspired, assisted, encouraged or

attempted to commit an offence under subparagraphs 13.1.1(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 13.2.1 below) considers should be a terrorism case. In deciding whether a case not covered by subparagraphs 13.1.1 (a), (b) or (c) above should be a terrorism case, the judge may hear representations from the CPS.

13.2 The terrorism cases list

13.2.1 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 King's Bench Division.

13.2.2 Such cases will be tried, unless otherwise directed by the President of the King's Bench Division, by a judge of the High Court as nominated by the President of the King's Bench Division, or an appropriately ticketed Crown Court judge.

13.2.3 The judges managing the terrorism cases referred to in paragraph 13.1.1 will be supported by the London and South Eastern Regional Co-ordinator's Office (the 'Regional Co-ordinator's Office') and the Case Progression Officer. An official of that office or an individual nominated by that office will act as the case progression officer for cases in that list.[179]

13.3 Procedure after charge

13.3.1 Immediately after a person has been charged in a terrorism case, anywhere in England and Wales, a representative of the CPS 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 their solicitor or other legal representative, if known;

b. the charges;

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.

13.3.2 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.

13.3.3 In order to comply with s.46 PACE 1984, if a defendant in a terrorism case is charged at a police station within the jurisdiction of Westminster Magistrates' Court, the defendant must be brought before Westminster

[179] For the purposes of **CrimPR 3.4**.

Magistrates' Court as soon as is practicable and in any event not later than the first sitting after they are charged with the offence. If a defendant in a terrorism case is charged in a police station outside the jurisdiction of Westminster Magistrates' Court, unless the Chief Magistrate or other designated judge directs otherwise, the defendant must be removed to that area as soon as is practicable. They must then be brought before Westminster Magistrates' Court as soon as is practicable after their arrival in the area and in any event not later than the first sitting of Westminster Magistrates' Court after arrival in that area.

13.3.4 As soon as is practicable after charge a representative of the CPS will also provide the Regional Listing Co-ordinator's Office with the information listed in paragraph 4 above.

13.3.5 The Regional Co-ordinator's Office or the Case Progression Officer will then ensure that the Chief Magistrate and the Legal Aid Agency have the same information.

13.4 Cases to be sent to the Crown Court under s.51 Crime and Disorder Act 1998

13.4.1 In all terrorism cases, the magistrates' court case progression form for cases sent to the Crown Court under s.51 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 and Case Progression Officer:

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 of consent by the Attorney General if necessary,
- the time for service of the detailed defence 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 issue, including the amount of

unused material, the manner in which the prosecution intends 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, the Case Progression Officer 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.

13.5 Cases to be sent to the Crown Court after the prosecutor gives notice under s.51B Crime and Disorder Act 1998

13.5.1 If a terrorism case is to be sent to the Crown Court after the prosecutor gives a notice under s.51B Crime and Disorder Act 1998 the magistrates' court should proceed as in paragraphs 11-13 above.

13.5.2 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 above.

13.6 The Plea and Trial Preparation Hearing at the Crown Court

13.6.1 At the PTPH, the judge will determine whether the case is one to remain in the terrorism list and if so, give directions setting the provisional timetable.

13.6.2 The Legal Aid Agency may attend the hearing by an authorised officer to assist the court.

13.7 Use of live links

13.7.1 Unless a judge otherwise directs, all Crown Court hearings prior to the trial will be conducted by live link for all defendants in custody.

13.8 Security

13.8.1 The police service and the prison service will provide the Regional Listing Co-ordinator's Office and Case Progression Officer with an initial joint assessment of the security risks associated with any court appearance by the defendant(s) 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 and the Case Progression Officer immediately.

14. WELSH LANGUAGE IN COURT

14.1 General

14.1.1 The Welsh Language Act 1993 provides that in administration of justice in Wales, the English and Welsh languages should be treated equally.

14.1.2 If a defendant in a court in England asks to give/call evidence in Welsh, the case should not be transferred to Wales without consultation with the Presiding Judge.

14.1.3 Where such a transfer is considered appropriate the Welsh Language Unit should be contacted to discuss specific case requirements. A Welsh interpreter should be booked via:

Welsh.language.unit.manager@justice.gov.uk

Uned Iaith Gymraeg | Welsh Language Unit
Gwasanaeth Llysoedd a Thribiwnlysoedd EM | HM Courts & Tribunals Service
Canolfan Cyfiawnder Troseddol Caernarfon | Caernarfon Criminal Justice Centre
Ffordd Llanberis | Llanberis Road
Caernarfon
Gwynedd LL55 2DF

Ffôn | Tel. 0800 212 368

14.1.4 Issues of practicability should be discussed with the Welsh Language Liaison Judge:

Ei Hanrhydedd y barnwr Mererid Edwards/ HHJ Mererid Edwards
Barnwr Cyswllt l'r Gymraeg/ Welsh Language Liaison Judge
HHJ.Mererid.Edwards@ejudiciary.net

Canolfan Llysoedd Sifil Caerdydd / Cardiff Civil Justice Centre
2 Stryd y Parc / 2 Park Street
Caerdydd / Cardiff
CF10 1ET

DX: 99500 CARDIFF 6

14.1.5 Legal representatives must inform the court when Welsh may be used by any witness or party, or in any document, to ensure appropriate listing arrangements.

14.1.6 The 'Magistrates' Courts' Protocol for Listing Cases where the Welsh Language is used' applies.[180]

14.1.7 If at the time of sending or lodging appeal to the Crown Court, it is known that Welsh might be used in the case, the court should be informed immediately, or as soon as it becomes known thereafter.

[180] See also **CrimPR 24.14**.

14.1.8 The law does not permit juror selection methods enabling discovery of whether a juror speaks Welsh, or to secure a bilingual jury, to try a case in which the Welsh language may be used.

14.2 Witnesses

14.2.1 When each witness is called, the court officer administering the oath/affirmation shall inform the witness that they may be sworn/affirm in Welsh/English. If Welsh is chosen, the witness should not be asked to repeat it in English.

14.3 Opening/closing of Crown Courts

14.3.1 Court opening and closing should be performed in Welsh and English, unless impracticable.