

Final

Section 14 of the Crown Court Manual

LISTING OF CASES

This section of the Crown Court Manual is issued under and with the authority of the Lord Chief Justice.

- It sets out the principles applicable to listing in the Crown and Magistrates' Courts.
- It supports the Criminal Procedure Rules which introduce new principles of case management to criminal cases. The changes made emphasise the fact:
 - that judges will be required to make firm arrangements for the listing of cases at the Plea and Case Management Hearing (or earlier)
 - that parties must comply with the directions and timetable then set so that cases are ready to be heard in accordance with that timetable
 - that cases commence promptly at the appointed hour in accordance with that timetable.
- It sets out the new arrangements for the assignment of judges to cases.
- It emphasises the importance, recently stressed by the Court of Appeal, of ensuring that no short hearings in other cases interrupt the prompt commencement or continuation of trials each day at the time appointed.

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1. INTRODUCTION

Listing is a judicial responsibility and function. The overall purpose is to ensure that, as far as possible, all cases are brought to a hearing or trial in accordance with the interests of justice, that the resources available for criminal justice are deployed as effectively as possible, and that, consistent with the needs of the victims, witnesses of the prosecution and the defence and defendants, cases are heard by an appropriate judge or bench with the minimum of delay.

The Concordat¹ states that judges are responsible for deciding on the assignment of cases to particular courts and the listing of those cases before particular judges, working with HMCS. Therefore:

- (a) The Presiding Judges of the Circuit have the overall responsibility for listing on each Circuit/Region. As set out at paragraph 4(2) below, certain cases in the Crown Court must be referred to the Presiding Judges for directions; the Presiding Judges will be supported by a Regional Listing co-ordinator.
- (b) In the Crown Court, subject to the supervision of the Presiding Judges, the Resident Judge at each Crown Court is responsible for listing at his/her Crown Court centre; the Resident Judge is responsible (following guidance or directions issued by the Lord Chief Justice and by the Senior Presiding Judge and Presiding Judges under paragraph IV 33 of the Consolidated Practice Direction) for determining the Listing Practice to be followed at that centre, for prioritising the needs of one case against another and deciding upon which date a case is listed and before which judge.
- (c) The Listing Officer in the Crown Court is responsible for carrying out the day-to-day operation of Listing Practice under the direction of the Resident Judge. The Listing Officer at each Crown Court centre has one of the most important functions at that Crown Court and makes a vital contribution to the efficient running of that Crown Court and to the efficient operation of the administration of criminal justice.
- (d) In the Magistrates' Court, the judicial members of the Justices Issues Group for each Area are responsible for determining the Listing Practice in that Area. The day-to-day operation of that Listing Practice is the responsibility of the Justices Clerk with the assistance of the Listing Officer.

¹ The agreement reached between the Lord Chief Justice and the Secretary of State for Constitutional Affairs and Lord Chancellor set out in statement to the House of Lords on 26 January 2004.

- (e) The Local Criminal Justice Board in each CJS Areas is responsible for delivering the policies and aims of the National Criminal Justice Board by:
- Improving the performance of the local criminal justice agencies
 - Improving provisions for victims, witnesses and others involved
 - Improving public confidence

2. PRINCIPLES OF LISTING

Lord Steyn summarised the guiding principle which must be followed²:

“There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public.”

When setting the Listing Practice, the Resident Judge or the judicial members of the Justice Issues Group should, in addition to following any directions given by the Lord Chief Justice, the Head of Criminal Justice, the Senior Presiding Judge and the Presiding Judges, take into account the overall purpose of listing as set out above and, in addition, the following principles; these are not listed in order of priority or importance.

- (a) Meeting the needs of victims and witnesses; each of whom may have differing needs – the young and the vulnerable require particular attention.
- (b) Ensuring the timely trial of cases so that justice is not delayed.
- 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 preparation by the prosecution and defence of their cases in accordance with the directions and timetable set before or at the Plea and Case Management Hearing.
 - Priority should be accorded to the trial of young defendants, and cases where there are vulnerable or young witnesses.
 - Custody time limits should be observed.
 - Priority may also be accorded to other types of case.
- (c) Providing for certainty, and/or as much advance notice as possible, as to the trial date.
- (d) Seeing that a judge or bench with any necessary authorisation and of appropriate experience is available to try each case and, wherever desirable, there is judicial continuity.
- (e) Taking into account the position of the defendant as to whether he/she is in custody or on bail.

² House of Lords - Attorney General's Reference No.3 of 1999 [2000] UKHL 63.

(f) Striking a balance in the use of resources, by taking account of:

- The efficient deployment of the judiciary in the Crown Court, and in the Magistrates' Court the proper and efficient deployment of the judiciary as is consonant with the need for magistrates' competences to be maintained and the Venne criteria to be followed.
- The proper use of the courtrooms available at the court.
- The provision in long cases for adequate reading time for the judiciary.
- The facilities in the available courtrooms, including the security needs (such as a secure dock), size and equipment, such as video link facilities.
- The desirability of timing Plea and Case Management Hearings so that the trial advocates can attend.
- The proper use of those who attend the Crown Court as jurors.
- The need to return those sentenced to custody as soon as possible after the sentence is passed, and to facilitate the efficient operation of the prison escort contract.

(g) Providing

- the defendant and the prosecution with the advocate of their choice where this does not result in undue delay to the trial of the case³.
- for the efficient deployment of advocates, lawyers and designated case workers of the Crown Prosecution Service, and other prosecuting authorities, and of the resources available to the independent legal profession, for example by trying to group certain cases together.

(h) Meeting the need for special security measures for category A and other high-risk defendants.

(i) Taking into account the impact of policies, targets and initiatives of:

- Her Majesty's Government and its agencies.
- Local Authorities, the Criminal Justice Board for the Area, the Chief Constable or Chief Crown Prosecutor for the Area and other local bodies.

Although the Listing Practice at each court centre will take into account these principles, the practice adopted will vary from court to court depending particularly on:

- The number of court rooms and the facilities available
- Location
- Workload - its volume and type
- The available number of advocates and lawyers

³ This does not in any way affect applications for changes in representation orders. For that, see the ruling of HH Judge Wakerley QC (as he then was) in [Asghar Ali](#) which has been circulated by the JSB.

- The proximity of the prison, particularly for women, juveniles, and young offenders
- The surrounding geography and public transport facilities
- The effective trial rate, after allowing for cracked, ineffective and vacated trials

What is plain is that a Listing Practice that will operate successfully in a small two-court centre is unlikely to suit the needs of a metropolitan multi-court centre and vice versa. It may also mean that on occasions the Listing Practice set may result on the judge working in chambers on his judicial work.

3. SETTING THE LISTING PRACTICE AT EACH COURT CENTRE

(1) Determination

- (i) The Resident Judge at each Crown Court and the judicial members of the Justices Issues Group in each Area will, in relation to the Crown Court and Magistrates' Court respectively, set overall Listing Practice in a local area in accordance with the objectives and considerations set out above.
- (ii) The Resident Judge, or the judicial members of the Justices Issues Group, as the case may be, will consider representations made by local criminal justice agencies and representatives of the defence and witnesses, in the setting of the Listing Practice and in the periodic reviews of that Listing Practice. Consultation with Local Criminal Justice Boards regarding local listing issues and the impact on cracked and ineffective trials should also take place.
- (iii) It will be for the Resident Judge, or the judicial members of the Justices Issues Group, to consider whether to do this by seeking comments in writing on the draft Listing Practice, or by convening a special meeting, or by discussing the issues at the court users' meetings referred to below, or otherwise conducting the consultation in the manner he or they consider best.

(2) Monthly analysis of the performance

- (i) The Court Manager, Listing Officer and/or Case Progression Officer should each month, or at such other period as may be specified by the Resident Judge or Bench Chairman and Justices Clerk:
 - (a) Review the causes of ineffective, cracked and vacated trials and provide to the Resident Judge (or the Bench Chairman and Justices' Clerk and District Judge, as the case may be) an analysis of each case or specified categories of case and the lessons to be learnt.

- (b) In the Crown Court, provide to and discuss with the Resident Judge the list of any outstanding cases which are older than 20 weeks, or such other shorter period as is specified by the Resident Judge. This list can be provided by the Crest RAGE report.
- (ii) Monthly (or other periodic) meetings should be also arranged between the Court Manager, Listing Officer or Case Progression Officer and local court users (including the CPS, Witness Care Unit, the Witness Service, police and defence solicitors (where possible)) and representatives of the Local Criminal Justice Board to discuss:
- (a) The analysis of cracked, ineffective and vacated trials (based on enquiry into the matters disclosed by the form completed after the enquiry conducted by the judge or the chairman presiding over the court for that case).
- (b) The action that might be taken to address any similar problems in advance of the trial and to improve the provisions for witnesses.

The discussion of the analysis of the reasons for cracked, ineffective and vacated trials should be minuted, and copies of the minutes should be sent to all the parties to the cases discussed. The outcome of these discussions may provide information for the Resident Judge and judicial members of the Justices Issues Group respectively to contribute to his/her/their review of Listing Practice.

(3) User Meetings

- (i) The Resident Judge or the representatives of the Justices Issues Group respectively (such as the Justices' Clerk and/or legal advisers) will hold periodic court user meetings with representatives of local prosecutors or other criminal justice agencies and representatives of the defence.
- ii) One of the agenda items will normally be the operation of the Listing Practice.

(4) Resolution of difficulties

- (i) Where difficulties arise, whether around listing generally or regarding specific cases, which cannot be resolved by the Listing Officer, the matter should be referred for consideration:
- In the Crown Court, to the Resident Judge or the judge assigned to a specific case.
 - In the Magistrates' Courts, to the Justices' Clerk, if it relates to a specific case, or, if it relates to more general issues, to the judicial members of the Justices Issues Group and then, if necessary, to the Area Judicial Forum.

- (ii) Where resolution of disagreement, either in relation to the Crown Court or Magistrates' Court cannot be reached locally, as set out in subparagraph (i), the issue should be referred without delay to the Presiding Judges or the Senior Presiding Judge.

4. THE REVIEW OF CASES AND THE ASSIGNMENT OF JUDGES TO CASES

(1) Review of cases on receipt at the Crown Court

The Listing Officer must ensure that the papers in each case coming to the Crown Court are reviewed so that the Listing Office has a general familiarity with the cases before the court.

(2) Class 1, Class 2 and other serious or long cases within class 3

- (i) The Senior Presiding Judge and Presiding Judges issued on 26 May 2005 Guidance to Resident Judges in relation to deployment and allocation of cases. Provisions may be modified in their application to certain courts by the Presiding Judges with the consent of the Senior Presiding Judge. This Guidance is set out in full in section 3 - Allocation of Business. It is very important that Listing Officers are fully familiar with this, as it applies to all serious or long cases heard at the Court. It is therefore reproduced in part here.

“PART I: CASES TO BE REFERRED TO A PRESIDING JUDGE

(a) All class 1 cases.

7. All class 1 cases must be referred to a Presiding Judge. The definition of Class 1 cases is set out in section 3 of this manual.

(b) All cases expected to last more than four weeks and all serious fraud cases as defined by the Lord Chief Justice in 1998.

8. All cases expected to last four weeks or more. If there are serious fraud cases (as defined by the Lord Chief Justice in 1998) that are estimated to last less than this, they must also be referred.

(c) Sensitive or complex rapes or other sexual offences

9. The Resident Judge must refer to the Presiding Judges all cases involving rape or other sexual offences which are of especial sensitivity or likely to attract publicity such as those involving well known persons or circumstances of particular difficulty or notoriety or serial cases. Paragraph 12 sets out the cases which must be referred to the Resident Judge and paragraph 14 sets out the procedure for assignment by the Resident Judge or Judge who is to try such cases without reference to the Presiding Judge.

(d) Terrorist and firearms cases

10. Cases involving explosives, terrorism or the actual discharge of firearms in the course of another crime must be referred to a Presiding Judge. Resident Judges should also refer the more serious cases of possession of firearms, especially where possession is in the context of robbery or other serious crime.

PART II: CASES TO BE REFERRED TO THE RESIDENT JUDGE

(a) All cases referred to a Presiding Judge

11. All cases under paragraphs 7-10 above which are required to be referred to a Presiding Judge must in the first instance be referred to the Resident Judge.

(b) Rape and other sexual offences

12. All sexual offences (and not merely those in class 2) must be referred to the Resident Judge who may deal with them, in accordance paragraph 14 without reference to the Presiding Judge, save in the circumstances specified in paragraph 9.

(C) Firearms, death by dangerous driving arson and other cases.

13. The following further classes of case must be referred to a Resident Judge:
 - (a) All cases involving firearms or imitation firearms.
 - (b) Cases involving causing death by dangerous or careless driving.
 - (c) Arson
 - (d) Kidnapping and false imprisonment.
 - (e) Cases where any defendant is under 18.
 - (f) Any case which appears to raise particularly complex, sensitive or serious issues.

PART III: PROCEDURE

14. The Resident Judge must arrange with the Listing Officers a satisfactory means of ensuring that all cases listed at their court are listed before judges or recorders of suitable seniority and experience, subject to the following:

(a) In the case of any case referred to the Presiding Judge where the Presiding does not assign the judge who is to try the case, then the assignment of the judge must be made by the Resident Judge. The time at which the assignment is made is at the discretion of the Resident Judge.

(b) In all rape cases and other sexual offences falling within class 2 (as set out in the Consolidated Practice Direction), the judge who is to try the case must be assigned by or under the direction of the Resident Judge. The time at which the assignment is made is at the discretion of the Resident Judge. The judge who is assigned to try the case must have been authorised to try Class 2 cases. It is a condition of the authorisation that it does not take effect until the judge has attended the relevant JSB course; the Resident Judge should check in the case of newly authorised judges that they have attended the course. Class 2 cases are (as defined in the Consolidated Practice Direction) –see Section 3 of this manual:

(c) The following offences, save in exceptional circumstances specifically authorised by the Resident Judge, should also be tried by a judge authorised to try class 2 cases who is assigned to try the case by the Resident Judge; all serious sexual offences these will include all of the following categories of case (see Section 3 of this manual)

(d) All cases specified in paragraph 14 must be assigned for trial to a judge by or under direction of the Resident Judge. The time at which the assignment is made is a matter for the discretion of the Resident Judge.

15. In cases which the Resident Judge is required to refer or decides to refer to a Presiding Judge, he/she should complete and sign a release form which, accompanied by a case summary; this should be sent promptly to a Presiding Judge.

16. Currently, different courts use different release forms. In future, all courts should try and use the same form. The form is attached (see Section 3 of this manual) Of particular importance when a release request is made are

- (a) a case summary - which can be very brief in a standard sort of case;
- (b) a clear recommendation by the Resident Judge about the judges available to try the case, and
- (c) any brief comments or reasons he/she thinks helpful.

(ii) A specific Protocol issued by the Lord Chief Justice on 22 March 2005 applies to serious fraud and other complex cases; it is applicable to all cases expected to last more than 4 weeks.

- The Regional Listing co-ordinator will be notified in writing by the prosecuting authority (on an agreed form) as early as possible of cases expected to last 8 weeks or more.

- Two specific sections are important for listing purposes:

2. **DESIGNATION OF THE TRIAL JUDGE**

i) **The assignment of a judge**

a In any case which is expected to last more than four weeks, the trial judge will be assigned under the direction of the Presiding Judges at the earliest possible moment.

b Thereafter the assigned judge should manage that case “from cradle to grave”; it is essential that the same judge manages the case from the time of his assignment and that arrangements are made for him to be able to do so. It is recognised that in certain court centres with a large turnover of heavy cases (e.g. Southwark) this objective is more difficult to achieve. But in those court centres there are teams of specialist judges, who are more readily able to handle cases which the assigned judge cannot continue with because of unexpected events; even at such courts, there must be no exception to the principle that one judge must handle all the pre-trial hearings until the case is assigned to another judge.

(ii) **Fixing the trial date**

Although it is important that the trial date should be fixed as early as possible, this may not always be the right course. There are two principal alternatives:

- (a) The trial date should be fixed at the first opportunity – i.e. at the first (and usually short) directions hearing referred to in sub-paragraph iii

From then on everyone must work to that date. All orders and pre-trial steps should be timetabled to fit in with that date. All advocates and the judge should take note of this date, in the expectation that the trial will proceed on the date determined.

- (b) The trial date should not be fixed until the issues have been explored at a full case management hearing (referred to in sub-paragraph iii), after the advocates on both sides have done some serious work on the case. Only then can the length of the trial be estimated

Which is apposite must depend on the circumstances of each case, but the earlier it is possible to fix a trial date, by reference to a proper estimate and a timetable set by reference to the trial date, the better.

It is generally to be expected that once a trial is fixed on the basis of the estimate provided, that it will not be **increased** without the party seeking to extend the time justifying the failure to provide originally for a proper estimate of time.

(iii) The first hearing for the giving of initial directions

At the first opportunity the assigned judge should hold a short hearing to give initial directions.

(iv) The first case management hearing

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The full protocol is set out in Section 3 of this manual.

(3) The Plea and Case Management Hearing (PCMH)

- (i) Under the regime established by the Criminal Procedure Rules 2005, the parties will be expected to provide an accurate estimate of the length of trial at the PCMH (or earlier) and accurate information about the availability of witnesses.
- (ii) Accurate information is essential; the Listing Officer should note any cases where inaccurate information is provided, as the reasons for this need to be investigated and, if due to a systemic failure, remedied.
- (iii) Experience has shown that dates on which an expert witnesses is available to attend the trial sometimes is the cause of difficulty. Although the provision of accurate information is the responsibility of the prosecution and defence, the Listing Officer or the Case Progression Officer should try and ensure that this issue is addressed prior to the PCMH.
- (iv) A trial date or trial window will generally be fixed at or immediately after the PCMH, or at a preliminary hearing if appropriate – see below.

(4) Assignment of cases to judges

- (i) The responsibility for the assignment of a judge to a case is, subject to any general or specific direction or guidance of the Presiding Judge,

that of the Resident Judge. Sub-paragraph (2) above sets out the guidance given by the Senior Presiding Judge and the Presiding Judges in relation to Class 1, Class 2 and other cases. The time at which a judge is assigned is a matter for the discretion of the Resident Judge. At larger court centres, the Resident Judge may delegate certain functions in relation to assignment to another judge.

- (ii) The Listing Officer will be provided with the itineraries of the judges who will visit the court well in advance, and should be able to plan the forward case-load of the court in discussion with the Resident Judge.

Note as to sittings by Recorders

Each Crown Court will have a number of Recorders who regularly sit there; the background, background and authorisations will be known. The Listing Officer should be told as far in advance as possible of the sittings of those Recorders and any other Recorders who may sit there so that the listing officer can take into account the experience of the Recorder (and any authorisations held) in forward planning and in discussions with the Resident Judge.

Particularly close attention must be paid to the cases that Recorders are assigned to try.

(5) Information to be provided by the Listing Officer to the Resident Judge

There should be regular discussions between the Listing Officer and the Resident Judge with regard to listing, both generally and about the warned, firm or daily lists as occasion may require.

(6) Custody Time limits

- (i) The Prosecution of Offences (Custody Time Limits) Regulations 1987 also limits the time which an accused person can be kept in custody before being invited to tender pleas. The Regulations also limit the time which the defendant can be kept in custody. Although the Regulations set a uniform 112 day limit between the last hearing at the Magistrates' court and the start of the trial in the Crown Court, the way in which the time is calculated is slightly different dependant upon the type of case.
- (ii) In relation to each of the following circumstances each offence charged for each defendant attracts its own time limit. If an indictment contains two offences charged which were sent separately, then both offences charged will have differing custody time limit dates.
 - The maximum period for which the defendant can be held in custody when committed for trial to the Crown Court is 112 days (Regulation 5(3)(a)).

- The maximum period a defendant can be held in the custody of the Magistrates' Courts in relation to an indictable only offence is 70 days (Regulation 4(2) and (4)). When an indictable only case is sent for trial under s. 51 of the Crime and Disorder Act 1998, the maximum period is 182 days between the date sent to the Crown Court and the start of the trial. However, after that time, any periods held in custody whilst at the Magistrates' Court must be deducted (Regulation 5 (6B)).
 - If a voluntary bill is preferred, the 112 day time period runs from the date of preferment of the indictment (Regulation 5(3)(b)).
- (iii) The prosecution may apply to the judge **before** expiry for an extension to the Custody Time Limit period. However, if the period has already been exceeded, the court must grant bail, albeit with any terms it deems appropriate.
- (iv) The start of the trial is defined:
- a. The 'start' of a trial on indictment is taken to occur when the jury is sworn and the defendant is put in the charge of the jury, or the court accepts a guilty plea.
 - b. When the court is to consider fitness to plead, the trial starts also starts when the jury is sworn in, and not at the time when the court first begins to hear evidence.
 - c. If a preparatory hearing is ordered under s. 8 of the Criminal Justice Act 1988, or s. 28 of the Criminal Procedure and Investigation Act 1996, the trial is deemed to start with that hearing.

It is important to note that these definitions may be more significant in the light of changes brought about by the Criminal Justice Act 2003. As legal argument may delay the swearing in of a jury, it is desirable to extend custody time limits to a date later than the first day of the trial.

- (v) Listing Officers should ensure that priority is given to listing custody cases for trial within the time limits, as set out above.
- (vi) While the prosecution will still be responsible for making applications to extend time limits, there will be a continuing onus on the Crown Court to monitor these cases and to inform the prosecution of the imminent expiry of the limit. This should be done not less than three weeks before the expiry of the applicable time limit set out above.
- (vii) Guidance is given in *R (Gibson) v Winchester Crown Court* [2004] EWHC (Admin) 361 (February 2004).

29. Clearly before a court is prepared to grant an extension because of the lack of availability of a courtroom, or a particular judge required to try the case, it should go to considerable endeavours to avoid having to postpone the trial to a date beyond the custody time limits. However, it has to be remembered that the

availability of a particular category of judge can be important for the achievement of justice in particular cases. The present case is an example. This is clearly a case which required to be tried by a High Court judge. While expedition is important, so is the quality of the justice which will be provided at the trial. In these circumstances it is necessary for a court considering an application for an extension of custody time limits to evaluate the importance of the judge of the required calibre being available.

31. The courts cannot ignore the fact that available resources are limited. They cannot ignore the fact that occasions will occur when pressures on the court will be more intense than they usually are. In such a situation it is important that the courts and the parties strive to overcome any difficulties that occur.

(7) Re-trials ordered by the Court of Appeal

- (i) In any case where the Court of Appeal has ordered that an appellant should be re-tried, the appellant must be arraigned on a new indictment, preferred at the direction of the Court of Appeal, within the time-limit specified by the Court of Appeal. The date specified must be within 2 months (section 8, Criminal Appeal Act 1968, as amended). The Registrar of Criminal Appeals writes to the Court Manager of the Crown Court immediately a re-trial has been ordered and sends with the letter a copy of the draft judgment; his letter is copied to the prosecuting authority and the defence. The Registrar sends a copy of the approved judgment of the court as soon as it is available.
- (ii) The Court of Appeal will normally order that the venue of the re-trial will be determined by the Presiding Judge of the Circuit where the original trial took place. The Court Manager or Listing Officer should therefore contact the Regional Listing Co-ordinator immediately so that the Presiding Judge can make the decision as to venue.
- (iii) Immediately the decision of the Presiding Judge as to the location of the trial is made, the Listing Officer of the court nominated by the Presiding Judge, or the Listing Officer's staff, should contact the prosecutor to ask when the indictment will be delivered, and list the case for arraignment as soon as possible within the time period directed by the Court of Appeal. These cases must be given sufficient priority so that the case is listed for arraignment in the period between receipt of the indictment and expiry of the time limit.

(8) Transferring cases to another court within the same Region

- (i) Any case referred to the Presiding Judges under the provisions set out in sub-paragraph (2) above may only be transferred to another court by or under the direction of the Presiding Judges, who will have the assistance of the Regional Listing Co-ordinator.

- (ii) It will also be necessary, from time to time, to transfer cases well in advance of the trial date to another court centre to equalise the amount of work at different centres in proximity to one another. Such transfers will take place only under the guidance of the Presiding Judges, provided in accordance with the principles set out above, and after consultation with users of the courts involved.
- (iii) It may be necessary to transfer a specific case at shorter notice to a different but proximate court centre to enable a trial to go ahead on a fixed date, or within the trial window, or for some other similar reason. Every effort must be made to avoid transferring a case where the witnesses have had a pre-court visit for familiarisation with the court and courtroom, or where there are transport difficulties. The Listing Officer must consult the parties; if they do not agree to the change, then the case must be referred to the Resident Judge of the transferring court for his/her decision.

(9) Transfer of cases between Regions/Circuits

(See Section 3 on the allocation of business.)

5. FIXING TRIAL DATES OR TRIAL WINDOWS AND OTHER HEARINGS

(1) General

- (i) Cases will be listed for trial depending on the circumstances of each particular case, in accordance with the Listing Practice determined by the Resident Judge.
- (ii) Meeting the objectives of the Listing Practice set for the Crown Court when allocating dates or windows for hearings may require compromise. For example, where a defendant is in custody and subject to custody time limits, his/her needs should be considered carefully. The impact on individual witnesses of any delay in bringing the matter to trial and the impact on the defendant of any change in the trial date must be balanced when considering timeliness.

(2) Fixtures and trial windows

- (i) A time for the trial will generally be allocated to a case at or immediately after the PCMH, or earlier if appropriate, as set out above. This will either be:
 - A fixed date, known as a fixture

- A trial window – either a provisional date or a period (always a week, save in exceptional circumstances) during which the case will be heard
- (ii) **Fixtures:** Cases where the court (at the PMCH or earlier) gives a starting date which it will make every effort to fulfil are known as fixtures. The number of fixtures a court can provide will depend on numerous factors, including the size of the court centre, the effective trial rate etc. The cases where fixtures should be given will be set out in the Listing Practice applicable at the Court, but may include the following:
- Class 1 cases
 - Class 2 cases and most other sexual offences
 - Other cases involving death, such as dangerous driving
 - Cases involving vulnerable and intimidated witnesses (including domestic violence cases), whether or not special measures have been ordered by the Court
 - Cases where the witnesses are under 16 or have to come from overseas
 - Cases estimated to last more than a certain time – the period chosen will depend on the size of the centre and the available judges
 - Cases where there has been a previous abortive listing
 - Re-trials
 - Cases involving interpreters and expert witnesses

It is important to note that if every case is listed as a fixture, there may be a reduction in flexibility in day-to-day listing because of the fewer number of cases in reserve if trials crack or become ineffective. In the long term, making every case a fixture at the PMCH or making too high a proportion of cases fixtures at the PCMH, may result in delay in the disposal of all but the shortest cases, as fixtures will have to be made at increasingly distant future dates and there will be fewer slots for medium length non-fixtures. Gaps will tend to be filled by shorter, more recent, cases and an imbalance of waiting times will be created. In any event, slots should be kept available to dispose of custody cases within time limits.

- (iii) **Trial window:** Where a case is not given a fixed date for trial at the PCMH it will be allocated a provisional date, or a period during which the court will make every effort to list the case for trial. This period should be kept as short as possible; it should be restricted to a one-week period (save in exceptional circumstances) to ensure that inconvenience to witnesses, defendants and advocates is kept to a minimum. The case may later be given a fixed date or “float” during the week.

(3) The use of floating trial dates

- (i) The court's Listing Practice will set out the general policy for the giving to cases of floating trial dates or, as they are usually known, "floaters"
- (ii) A "floater" is a trial not allocated to a specific court or judge but which may be taken in any court in the same court centre on a specific day or within a period of time, which should be no longer than a week, unless there are exceptional circumstances. Care should be taken when listing a case as a "floater" to ensure that as little inconvenience as possible is caused to the parties. The use of floaters will vary from centre to centre, but the following criteria should be considered when setting the Listing Practice for cases to be listed in this way:
- Short and uncomplicated cases which are not within the categories identified in sub-paragraph (2) (ii) above
 - Cases involving few witnesses, no expert witnesses and witnesses who are located reasonably locally
 - Cases where counsel or advocates briefed are located reasonably locally
 - Preferably bail rather than custody cases
- (iii) "Floaters" which are not listed or reached on a particular day should:
- Be given priority in any subsequent listing arrangements
 - Be listed as a floater more than once only in exceptional circumstances
 - Be given a fixed date after an abortive hearing
- (iv) Some courts use "fixed floaters". This is a term for a case which either cannot be given a fixed date for trial, or would not normally meet the criteria for a fixture to be allocated, but the parties are informed that it will be listed on specific date as a "floater". A courtroom may not therefore be allocated in the Daily List, but some certainty of date is provided.
- (v) Some courts have on occasions used "backers". This is a term applied to cases which are used to follow another case in a courtroom in anticipation that one or more of the preceding cases will not last as long as the estimate given. The use of "backers" leads to a high possibility of an ineffective hearing and use must not be made of this method of listing, unless it is clear beyond any possible doubt whatever that the advocates and witnesses are not connected to the case already listed in that court, so that, if necessary the case can be moved to another court.

(4) Arranging other hearings

- (i) In addition to trials, the court's Listing Practice will have to provide court time for shorter matters, such as:
 - Bail applications in chambers
 - Applications to vacate or adjourn hearings
 - Preliminary hearings
 - Plea and case management hearings
 - Applications in respect of sentence indications not sought at the PCMH
 - Sentences
 - Mentions
 - Appeals from the Magistrates' Court⁴.
- (ii) Some courts find such hearings are best dealt with by a specific judge who deals with such matters each day of the week in a list known as "an administrative list". Other court centres set one or more days in the week in which one or more judges deal with these matters; some courts assign specific days for cases coming from particular Magistrates' Courts. Other court centres assign such matters to most of the judges each day at 9:30 or 10 a.m., subject to the matters set out in sub-paragraph (v) and (vi). What practice is best suited to each centre is a matter for local decision by the Resident Judge.
- (iii) Accurate time estimates must be provided by the parties, who must complete the application within the estimate, unless there are exceptional circumstances.
- (iv) On occasions judges sitting in the Crown Court may also have to hear applications in cases pending before them in the civil or family jurisdiction of the County Court. There must be careful liaison to ensure that the progress of a trial on which the judge is engaged in the Crown Court is not delayed. In particular, no hearing should be listed or fixed by a judge which may risk that judge being unable to start or continue the trial listed in the Crown Court at the appointed time. Such applications should generally therefore be fixed either at an early time (9 or 9:30 a.m.) or at the end of the court day.
- (v) It is, however, essential, that whatever practice the Resident Judge sets, the Listing Officer, with the support of the Resident Judge,

⁴ It is desirable in all cases where witnesses are likely to be needed on the appeal to check availability before a date is fixed.

must ensure the practice is implemented in a way that **no hearings** (whether Crown Court or from other courts), **especially bail hearings, delay the prompt commencement of trials at the appointed time. Parties to applications must either complete the application within the time estimate provided, or expect the application to be adjourned if not so completed.**

- (vi) **On no account, therefore, should short hearings be listed or fixed by a judge that may have this effect, or delay the start or continuation of a trial at the Crown Court.**

6. MONITORING THE COMPLIANCE WITH DIRECTIONS AND TRIAL READINESS

(1) The role of the Case Progression Officer

- (i) The name of the Case Progression Officer for the prosecution and each defendant will be recorded by the parties for the Crown Court. The Crown Court Case Progression Officer will be under a general duty to liaise closely with them to ensure the case is ready for trial on the date set.
- (ii) At or as soon as possible after the PCMH, the parties will be supplied with a copy of the directions made.
- (iii) Although it is the primary duty of the parties to comply with the directions made, it is the function of the Crown Court Case Progression Officer to monitor compliance with the directions made and to ensure that any failures that cannot be remedied, and which may affect the readiness of the case and the date for trial, are brought to the attention of the judge assigned to the case (if there is one) or to the Resident Judge.

(2) General liaison

Listing Officers and Case Progression Officers should establish good relations with the Prosecuting Authorities and local solicitors and maintain a close liaison with both the prosecuting and defence solicitors engaged in a case. It is the duty of the prosecution and defence to keep the court informed of any significant developments in a case, any changes in the information previously provided to the court and the availability of witnesses.

Note: Confidential information

The Listing Officer should ensure that confidential communications e.g. about possible pleas, are not passed to the judge or other parties without agreement.

(3) Weekly trial check meetings

- (i) Weekly trial check meetings may, if the Resident Judge so decides, be held between the Listing Officer, the CPS Case Progression Officer, the Witness Care Unit and, where possible, the defence. In courts where there are prosecutions by prosecutors other than the CPS, appropriate arrangements should be made with the case progression officers of those prosecuting authorities.
- (ii) If defence solicitors are not present at such meetings the Listing Officer should telephone them to find out the up-to-date position on cases.
- (iii) Any cases that are identified that will not be trial ready (eg evidence not ready, difficulties with witnesses which cannot be promptly resolved) should be referred to the assigned judge or the Resident Judge.

(4) Adjourning or vacating a trial date or trial window

- (i) Once a trial date or window is fixed, it should not be vacated or moved without good reason. Under the Criminal Procedure Rules, parties are expected to be ready by the trial date.
- (ii) The Listing Officer may, in circumstances determined by the Resident Judge, agree to the movement of the trial of a case to a date to which the defence and prosecution both consent, provided the timely hearing of the case is not delayed. The prosecution will be expected to have consulted the witnesses before agreeing to any change.
- (iii) In all other circumstances, requests to adjourn or vacate fixtures or trial windows must be referred to the assigned judge or the Resident Judge.

7. PLANNING FOR FUTURE WORK: THE WARNED AND FIRM LISTS

(1) Long term planning

The way in which a Listing Officer does the long term planning for the court centre will depend upon the size of the centre and the nature of the workload.

(2) Warned lists

- (i) Each court will usually operate a warned list, which it publishes weekly, setting out the cases to be listed in weekly or other periodic blocks during a three - to four-week period. The period covered by the list may be longer than three or four weeks if the Resident Judge so decides.
- (ii) The publication of the warned list enables the parties to check the availability of all concerned. It also enables police forces to re-check shift patterns. It is vital that the court is notified of any difficulties in advance.

- (iii) Any objection to listing should be accompanied by reasons why the case should not be heard at that time. The warned list can also be discussed at the weekly trial check meeting.

(3) The weekly “firm list”

- (i) Each court will normally have a “firm list” which it publishes each week. At some courts this is known as the advance list, but the term “firm list” should now be used as that is the term used by XHIBIT.
- (ii) The firm list contains cases which the court intends to be heard in the forthcoming week. The main list shows the day of the week that each case (fixtures and floaters) is expected to be heard, the court to which it has been allocated and an indication of the judge who is expected to hear the case.
- (iii) The reserve list will include a number of trials which may be taken at short notice to fill gaps, subject to local listing practice.

(4) Provision of information to HM Prison Service

- (i) Each court must have a system for the provision of the advance lists and other information to HM Prison Service in accordance with the Protocol agreed between HMCS (formerly the Court Service) and the Prison Service; the current version is the revision effective 31 December 2002. The purpose of the protocol is to enable the Prison Service to ensure that defendants in custody are lodged at a prison within easy travelling time of the court for the day on which the defendant in custody is to be present.

Note: This protocol is set out as an appendix to section 33 in this manual

- (ii) Each Crown Court equipped with a video link with a prison must have in place arrangements for the conduct of PCMH and other pre-trial hearings by video link.

8. SETTLING THE DAILY LIST

(1) Daily lists

- (i) In compiling the daily list the Listing Officer will, in implementing the Listing Practice at the Crown Court, take into account a variety of factors, including:
 - Confirmation that the directions made at the PCMH have been complied with and that, accordingly, the case is ready for trial

- The other commitments of the parties, eg CPS, prosecution and defence advocates, police officers in attendance, experts
- The optimum timing for the attendance of witnesses, particularly for disabled, vulnerable and child witnesses, and any other arrangements which may need to be made
- The time a defendant in custody is contracted to arrive (in the case of women and young offenders at certain courts)
- The length of hearing
- The age of defendant, eg youth and other offenders may be taken first
- Any special security requirements
- Whether a trial judge has been allocated
- Continuity in the judicial management of a case, eg if a judge has dealt with all previous matters it might be productive for him or her to continue to deal with pre trial hearings
- Whether a sentence has been reserved to a judge

There should be noted on the list the application of s.39 or any other reporting restrictions.

(ii) In order to prepare the Daily List the Listing Officer will:

- Obtain a report from each Court Clerk over the course of the morning on the progress of each case, and assess the position in each court to determine the likelihood of changes to the published list for the following day.
- Speak to judges and advocates over the lunch adjournment where necessary about the prospects for the afternoon and the next day.

(2) Publication of the daily list

(i) The Listing Officer will publish a Provisional Daily List by 1.30 p.m., or as soon after as is possible, and the Final Daily List by 3.30 p.m.

(ii) It is very important that everyone affected by a listing decision should receive copies of all lists produced by the court as soon as possible.

- In courts with XHIBIT, arrangements should be made for the list to be e-mailed, as part of a standard e-mail list, to court users.
- In courts without XHIBIT, arrangements should be made locally for users to obtain information from the web, or, where this is not possible, arrangements should be made for distribution of a hard copy to:
 - The judiciary

- CPS or other relevant prosecuting authority
- Defence solicitors
- Linked barristers' chambers
- Police liaison officers
- Prison Service
- Probation Service
- Shorthand writers
- Witness Service
- Press
- List Publication room (where arrangements exist)
- Any magistrates sitting on appeals from the Magistrates' Court

- (iii) Methods of communication should be agreed locally and, wherever possible, use must be made of e-mail to ensure timely receipt of information. Any late changes should be notified by e-mail and/or telephone. Defence solicitors should also be notified by e-mail and/or telephone when a case in which they are instructed is listed for hearing the following day, whether for trial or otherwise, subject to local agreement.

Note: The use of secure e-mail is not necessary for the provision of this public information and so it can be sent to any defence solicitor by ordinary e-mail.

- (iv) Defendants and appellants in person should be notified of the date of the hearing by text message or telephone, confirmed by recorded delivery letter. Where possible, a telephone number for contact purposes should be noted so that there will be no delay in notification of any subsequent alteration.

(3) Titles to be used in the list; bilingual lists in Wales

- (i) When cases are listed for hearing before the following categories of judge the court list should refer to him or her, as the case may be, thus:-
- a) High Court Judge – The Honourable Mr (or Mrs) Justice A.
 - b) Circuit Judge – His (or Her) Honour Judge B (QC) or, if he or she is a Recorder of a city or town, the title usually used, such as “The Recorder of”
 - c) A Recorder of the Crown Court – Mr (Mrs, Miss or other title) Recorder C (QC).
 - d) Circuit Judge or Recorder sitting as a judge of the High court under section 29 of the Supreme Court Act 1981 – as in b) or c) above, with the addition of the words “sitting as a judge of the High Court”.

- e) Deputy Circuit Judge (other than a retired judge sitting as a Deputy) – Mr (Mrs, Miss or other title) D.E. (QC), sitting as a Deputy Circuit Judge.
 - f) Retired Circuit Judge sitting as a Deputy – His (or Her) Honour F.G. (QC), sitting as a Deputy Circuit Judge.
- (ii) The format for bilingual lists in Wales is specified by the Liaison Judge for the Welsh Language in conjunction with the HMCS Welsh Language Unit.

(4) Notifying sureties of hearing dates

Where a surety has entered into a recognizance in the Magistrates' Court in respect of a case committed or sent to the Crown Court and where the bail order or recognizance refers to attendance at the first hearing in the Crown Court, the defendant should be reminded by the Listing Officer that the surety should attend the first hearing in the Crown Court in order to provide further recognizance.

The Court should also notify sureties of the dates of the hearing at the Crown Court at which the defendant is ordered to appear in as far in advance as possible: see the observations of Parker LJ in *R v Crown Court at Reading ex p. Bello* [1992] 3 All ER 353.