

The Management of Prisoners that present a risk of escape or violence when attending Criminal Courts

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Introduction

1. This note provides best practice guidance for **Custody Management Directions** for those prisoners who may pose a risk of escape or violence. The guidance applies to both Crown and Magistrates' Courts, but not to civil courts. The objective of the guidance is to ensure that wherever possible the risk of escape or violence by prisoners is identified in advance of a court appearance and is managed by introducing appropriate arrangements that do not unnecessarily prejudice the prisoner.
2. The guidance is underpinned by the following principles:
 - (ii) Any escape from court is highly undesirable and undermines public confidence in the criminal justice system
 - (iii) Custody Management Directions (including the use of handcuffs or other restraints) must not prejudice a fair trial
 - (iv) Any application of force to a person is used only when it is necessary, for the minimum possible duration and only to the extent necessary
 - (v) There must always be compelling reasons supported by a risk assessment and comprehensive information before applications are made for the use of any restraints. Care must always be exercised to restrict the occasions where applications for Custody Management Directions are made to the Court to those where the use of restraints is, exceptionally, justified.
 - (vi) In all but the exceptional case, the risk posed by a defendant will be managed through the use of a secure dock where available and through the provision of the necessary number of dock officers.

- (vii) All applications for Custody Management Directions should be made at the earliest opportunity. Applications for restraint will be made by the prosecuting authority having conduct of the case, for example, Customs and Excise, Serious Fraud Office as well as the CPS with full supporting reasons.
- (viii) It is for the Court to determine whether handcuffs or other restraints may be used.

These principles apply to all stages of court proceedings. The approach should not differ merely because a prisoner has been convicted or remanded for sentence. Save in the most exceptional circumstances a trial will not be conducted with a defendant in handcuffs. This may have an effect on the verdict of the jury and therefore be prejudicial to the prisoner.

Communication and information sharing

3. Good communication and intelligence sharing between the Police, Prison Service, escort contractors and the CPS is essential to ensure that defendants who pose a risk of escape or violence are managed effectively when they attend Court. Advance notice in writing to the Court of the appearance of potentially violent prisoners or those who pose a risk of escape will enable escort contractors, the Prison Service and the Police to make arrangements with the Court for additional security measures. This will always result in the Prison Service or escort contractors providing the necessary number of dock officers and, where possible, to the listing of the case in a court room with a secure dock.
4. It is of course recognised that there are occasions when a defendant will give no prior indication of violence or of the desire to attempt escape, or may only do so at or shortly before the hearing. Unexpected incidents will always occur and when they do they need to be managed as effectively as possible in the circumstances. However, where the escort contractors, Prison Service or Police may be aware of defendants who pose a risk of escape or violence, they must notify the Court in writing at the earliest opportunity.

Listing of Custody cases

5. The Court should be notified through the Court Listing Officer in writing of the risk of escape or violent behaviour by a prisoner due to attend Court by the Police, Prison Service, custody officers or any other agency as soon as it is identified. Such notification must be made on a Custody Management Directions Form and will always be copied to the prosecuting authority such as the CPS.
6. However there is also an opportunity for the Prison Service to notify the Court in writing through the Listing Officer at the point when they are contacted and informed of the date that the defendant is required to appear. Again, such notification must be made on a Custody Management Directions Form which must be copied to the prosecuting authority such as the CPS. The Court Listing

Officer must then ask the judiciary to consider whether the case should be listed in an alternative courtroom with a more secure dock or whether alternative security measures are necessary. The Court Listing Officer will, after consulting the judiciary, liaise with the CPS and defence regarding witness issues, if consideration is being given to transferring the case to another court centre, either for reasons of security or to avoid an unnecessarily long escort journey.

Deployment of additional Dock Officers

7. The risk of violence or attempted escape will in most cases be managed by the deployment of the necessary number of dock officers. The prisoner escort contractor, and the Prison Service in the case of Category A prisoners, are **entirely** responsible for the custody and protection of defendants in the dock and must ensure that an appropriate number of dock officers is made available, **even if there is late notification of the dangerous nature of the defendant**. If the escort contractor contends that he cannot in fact provide the requisite number of dock officers, details of that contention with all supporting paperwork and reasons must be submitted in writing forthwith to the Court so that a judicial determination can be made as to the future conduct of the case or other appropriate orders.

Note: The definitions of Category A and escape risk classifications used by the Prison Service are attached as **Annex 1**.

Applications for Custody Management Directions

8. Any application to the Court (Annex 2). will be made by the prosecuting authority on the advice of the Police, Prison Service or escort contractor (as the case may be), preferably at least one week in advance of the hearing; in the case of the Magistrates Courts it is accepted that a week's notice may not be practicable; in such a case notice must be given as early as possible. The form will specify the nature of the concern and will provide for alternative methods of dealing with the risk to be considered by the judiciary; handcuffing will only be permitted in the most exceptional circumstances.
 - a. In the Magistrates Court, an application made on the day of the trial must be made to the Bench or the District Judge who is to hear the case, unless it can be made well in advance, in which case it will be considered by a court (District Judge or Magistrates) sitting on the day it is made.
 - b. In the Crown Court, the usual application will normally be considered by the Resident Judge or, if a judge has been assigned to hear the case, by that Judge.
 - c. In the Crown Court, a late application will be considered by the Trial Judge.

It is important in each case that the perceived risk and the evidence for it are fully and carefully specified as set out below.

9. In certain circumstances, where the judiciary have given their approval to the arrangements, the Listing Officer will be able to decide on an appropriate course of action, in liaison with the parties, e.g. to list the case in a courtroom with a secure dock or to secure additional custody officers. Otherwise the application must be listed in the manner set out in paragraph 8.
10. The judge or magistrate hearing an application for the use of handcuffs or other restraint that may affect the conduct of the trial will determine the application in the usual way. The papers will be served on the defence and defence submissions heard. If there are matters in respect of which Public Interest Immunity may be claimed, then a separate application will be needed and should be made in the manner advised by the CPS.
11. It is recognised that there will be occasions when an application cannot be made a week in advance of the hearing, particularly in the Magistrates Court. On these occasions the judge will require a full explanation for why a late application has been made. Late applications must provide full details of the risk that the defendant poses. It should also be remembered that the Prison Service or custody officers will require sufficient time to consider alternative arrangements if an application is refused.
12. An application for the use of handcuffs or other restraints will be refused unless (1) there are good grounds for believing that the prisoner poses a risk of violence towards those in court (including escort staff) during the case or for believing that the prisoner may try and escape, and (2) there are no other means of restraining the defendant other than the use of handcuffs or other restraints. It is not sufficient to show that the nature of the alleged offence for which the prisoner is subject to court proceedings was an offence of violence. In determining the risk of violence the identities of others expected (or unexpectedly appearing) in court is a consideration.
13. In the case of escape risk (1) there must be evidence of past escape, or past attempt at escape, or intelligence which shows that there is a risk of escape over and above the assumed motivation of all prisoners to escape and (2) no other means of preventing escape is practicable other than the use of handcuffs or other restraints. The same principles apply to Category 'A' prisoners, whether potential, provisional or confirmed by security classification. The court will not treat the categorisation of a prisoner as a Category A prisoner as justifying the use of handcuffs or other restraints, unless it is shown that there is a real risk of escape and that no other means of preventing escape is practicable other than the use of handcuffs or other restraints such as the use of a secure dock.

ANNEX 1 - Escape risk classifications

- **Category A**
 - **Standard Escape Risk**
 - **High Escape Risk**
 - **Exceptional Escape Risk**
E-List prisoners
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Category A

A Category A prisoner is a prisoner whose escape would be highly dangerous to the public or the police or the security of the State and for whom the aim must be to make escape impossible.

In deciding whether Category A is necessary, consideration may also need to be given to whether the stated aim of making escape impossible can be achieved for a particular prisoner in lower conditions of security, and that the prisoner is categorised accordingly. However this will only arise in exceptional circumstances since escape potential will not normally affect the categorisation as it is rarely possible to foresee all the circumstances in which escape may occur.

Within Category A there are three levels of escape risk classification; standard, high and exceptional. The definitions for the escape risk classifications are as follows:

Standard Escape Risk

Most Category A prisoners are classified as standard escape risk. They are not considered to have the determination and skill to overcome the range of security measures that apply to the custody and movement of Category A prisoners. There is no current information to suggest that they have external resources that could be used to assist them to overcome those measures. They have no history of escape or determined escape planning. Even so, the Prison Service must assume that they would take any opportunity to escape and that, if unlawfully at large they would pose a very serious threat to the public, the police or the security of the State

High Escape Risk

They have a history and background which suggest that they have the ability and determination to overcome the range of security measures which apply to the custody of standard risk Category A prisoners. There may be current information to suggest that they have associates or resources which could be used to plan and carry out an assisted escape attempt. If there is information that the prisoners or associates have access to firearms or explosives, and have been willing to use them in committing crime or in avoiding capture, high risk is the expected category.

Exceptional Escape Risk

A small number of Category A prisoners are classified as exceptional escape risk. These are usually cases having the same features which apply to high escape risk, but where the nature and extent of the external resources which could be called upon to mount an escape attempt are such that the level of threat posed requires that the prisoner be held in the most secure accommodation and conditions available to the Prison Service in order to achieve the aim of making escape impossible. Prisoners who have a history and background which suggest that they have the personal resourcefulness to overcome, with or without any external assistance, all but the highest conditions of security available, may also warrant an exceptional escape risk classification.

E-List prisoners

Prisoners who have successfully escaped or who have attempted escape or for whom there is intelligence that they may try to escape are formally listed as 'E-list' (escape list) prisoners. They are subject to tighter monitoring and, in prisons, will be denied access to activities and locations from where it is considered they may be successful in escaping.

Annex 2

MANAGEMENT OF PRISONERS WHO PRESENT A RISK OF ESCAPE OR VIOLENCE WHEN ATTENDING COURT

APPLICATION TO COURT FOR IMPROVING SECURITY ARRANGEMENTS

PRISONER DETAILS

NAME..... DOB.....

PRISON OR PNC NUMBER.....

TO THE LISTING OFFICE / CLERK OF COURT / PROSECUTOR

The above named prisoner will be appearing before
Crown/magistrates' court on (date) and presents a risk of
violence/escape and I request that in respect of that hearing:
(Please indicate the required option/s)

- (a) the hearing takes place in a courtroom with a secure dock (if available)**
- (b) a change of venue to**
- (c) additional police presence**
- (d) the use of restraints**

REASON FOR REQUEST

(Please refer to the guidance and set out the grounds for making the request with risk assessment. The nature of the offence is not a ground to support the application. State why the risk cannot be managed by additional dock officers)

COMPLETED BY:

Name:.....Signature:.....Position:.....

Date:..... Establishment:.....

Telephone Number:.....Fax Number:.....

Produced on behalf of the Senior Presiding Judge Lord Justice Thomas. For further information please contact Tim McDonnell.