



The Rt. Hon. Lord Justice Thomas
Senior Presiding Judge for England and Wales

Royal Courts of Justice
Strand
London WC2A 2LL

020 7947 7332 (Secretary)
E: LordJustice.Thomas@courtservice.gsi.gov.uk
E: Clerk.ThomasLJ@courtservice.gsi.gov.uk
E: (Secretary): jennifer.oldroyd@courtservice.gsi.gov.uk

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To Presiding Judges, Resident Judges, Chairmen of Area Judicial Fora, Chairmen of Benches, the Senior District Judge (Magistrates' Courts) and Justices' Clerks

Effective, Cracked, Ineffective and Vacated Trial Monitoring Scheme

This is the third and last of the letters which I am writing at this time in connection with improving the administration of justice. This one deals with the monitoring of ineffective, cracked and vacated trials, and is written because HMCS is revising the form.

The present position

In the course of last year I wrote to you about the monitoring the reasons for ineffective, cracked and vacated trials. I am very grateful to you for having done so much to ensure that it is the judge or the chairman presiding who:

- Conducts a searching inquisition in open court into the reasons why a trial is ineffective or, if the defendant pleads guilty only at the time the trial should have started, why this might not have happened earlier. Advocates should expect this enquiry (see paragraphs 24.7(b) and 17.7(b) of the Criminal Case Management Framework).
- Sees that the reasons are recorded on the form in sufficient detail so as to identify, particularly in the case of ineffective trials, whether the cause is attributable to a one-off problem, whether it was avoidable, or whether the reason indicates a systemic problem.
- Signs the form after it has been signed by the advocates.

The completion of the form after inquiry in open court has been found to have four principal benefits:

- It makes open to public scrutiny the reasons why a trial has not proceeded.
- Knowledge of the likely exposure to public scrutiny of any inefficiency (which has brought about the failure of a trial to proceed) helps ensure that every step is taken to prevent that inefficiency re-occurring.
- It makes it certain that the reasons are accurately recorded. The signature of the judge or the presiding chairman means the reasons given in court are not open to subsequent challenge by anyone who may be responsible for any failure or deficiency.
- The information provided has helped reduce the incidence of ineffective trials through the monthly analysis to which I will refer.

May I thank you all very much for bringing this about.

There are, however, some courts where the reasons are not completed as fully as they should be or where the form is not being signed by the judge or presiding chairman. I would therefore be grateful if you would remind judges and presiding chairmen that it is important that they make the requisite enquiry and ensure that the reasons are recorded on the form, which should then be signed by them.

The revised form

With the merger of the administration of the Crown and Magistrates' Court through HMCS, it is appropriate to collect information, so far as is possible, in the same format. The form will therefore be different, but most of it will be very familiar. Nothing changes in the procedure to be followed.

There is a new section for trials in absence. The provisions of the Consolidated Practice Direction relating to failure to surrender to bail and trials in absence highlight the importance of courts giving serious consideration to proceeding in absence. Reasons for the decision, whether it be to proceed in absence or not to proceed should always be given. The Practice Direction also stresses the importance of dealing as soon as practicable with defendants who fail to surrender to bail, rather than waiting for the trial of the offence in respect of which bail was granted.

There are two important changes for the Crown Court: (1) there is a new section on sentence indications consequent to the decision in *Goodyear*, and (2) there is a new requirement that figures be kept for vacated trials and their causes. Timetables set at or before the PCMH must be followed, and the causes of any vacated trial dates or trial windows have therefore to be very carefully monitored and analysed.

The monthly analysis

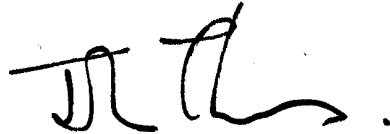
It has been found that, at those courts where a detailed monthly analysis of the case is carried out by the Court Manager or under the supervision of the Justices' Clerk, it has been possible to identify systemic problems and other deficiencies and to take steps to remedy them. There will always be casual reasons for ineffective trials, such as an illness on the morning of the trial, but systemic problems, such as deficiencies in the witness warning system or types of case that need particular monitoring, have been clearly identified.

It has been shown that it is not sufficient merely to record the statistics and produce a table showing the numbers in each category. What is required is a thorough examination of the underlying facts of the problem which must then be set out in respect of each case in narrative form as part of the analysis. Without this "drilling down" through such an analysis, the exercise of merely collating the figures is of comparatively little value as a means of improving the administration of justice in the courts. In the Crown Court, this analysis should be applied to each case, but in the Magistrates' Court, the volume of such cases may mean that the analysis can only be undertaken of a proportion of the cases.

Most Resident Judges receive such a customised analysis on a monthly basis; HMCS will ensure that all Resident Judges, all Bench Chairmen and all Justices' Clerks will now receive an analysis for their court. It is then for the Resident Judges or Justices Issues Groups respectively to determine what steps they wish to take as a result of any problems disclosed by the analysis and whether any changes are required at the court or in the practices of the court. Experience in the Crown Court has shown that direct judicial involvement through chairing meetings which explore these problems achieves the quickest remedy.

It will usually be the practice to send the analysis to the users of the court involved in the trials covered by the analysis (including the defence and Legal Services Commission), and for the Resident Judge or Justices Issues Group (or the Court Manager in the Crown Court or the Justices' Clerk in the Magistrates' Court on their behalf) to convene periodic meetings of such users at which consideration can be given to what steps might be taken to remedy any problems disclosed.

HMCS will copy this letter to Regional Directors, Area Directors and to Court Managers and it will form Annex B to the Scheme Guidance.

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JL' followed by a flourish and a period.