

# **CRIMINAL PROCEDURE RULE COMMITTEE**

**MEETING ON FRIDAY 1<sup>st</sup> MAY, 2020 at 1.30 p.m.**

**MEETING CONVENED BY TELEPHONE CONFERENCE**

## **DRAFT MINUTES**

### **Present**

#### **Committee members**

Lord Justice Fulford (chairman of the meeting)  
Mr Justice William Davis  
HH Judge Picton  
HH Judge Edmunds QC  
District Judge (Magistrates' Courts) Snow  
Louise Bryant  
The Director of Public Prosecutions, Max Hill QC  
Sue Gadd  
Alison Pople QC  
Paul Jarvis  
Shade Abiodun  
Assistant Commissioner Ephgrave  
Jodie Blackstock  
David Kenyon

#### **Also attending**

Senior District Judge (Magistrates' Courts) Arbuthnot, the Chief Magistrate  
Professor David Ormerod QC, University College, London  
Hanna van den Berg, Lord Chief Justice's Office  
Richard Sampson, Chief Magistrate's Office  
Siân Jones, Justices' Clerks' Society  
Sophie Marlow, Attorney General's Office  
Nigel Gibbs, Crown Prosecution Service  
Alison Mead, HM Courts and Tribunals Service  
Richard Chown, Ministry of Justice  
Jonathan Solly (Committee secretariat)

*Apologies are offered to any taking part whose names were missed.*

### **1. Welcome, apologies for absence and announcements**

Chairing the meeting, Lord Justice Fulford welcomed Committee members and all those who usually attended, thanking all for their participation by telephone conference in the difficult circumstances of the public health emergency. He reported apologies for absence from Lord Justice Haddon-Cave and Edmund Smyth; and from among those who usually attended the Committee's meetings, Alyson Sprawson.

The chairman thanked members for having considered and approved at speed what since had become the Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020; and thanked Ms Blackstock for the message which she had circulated commenting on the recent Equality and Human Rights Commission report *Video hearings and their impact on effective participation*. Ms Blackstock explained that she had wished to correct any

misapprehension that recent research by the EHRC cast doubt on the potential value of conducting any court hearing at all by live link. That was not so. In particular, fully virtual hearings were different. A further evaluation of the JUSTICE research would be published shortly.

## **2. Draft minutes of the meeting held on 20<sup>th</sup> March, 2020**

The draft minutes of the meeting on 20<sup>th</sup> March, 2020, were approved. There were no matters arising.

## **3. Criminal Procedure (Amendment) Rules 2020: criticism by the Parliamentary Joint Committee on Statutory Instruments** **CrimPRC(20)24** **CrimPRC(12)36**

The chairman remarked the depth of feeling which this paper appeared to have provoked; principally in the secretary. The Committee agreed:

- 1) that future Amendment Rules should cite additional enabling powers in the preamble as well as elsewhere; and
- 2) that despite the recent criticism no amendment should be made to rule 5.8 or to rule 5.4.

## **4. Criminal Procedure Rules 2020: time limits in business days** **CrimPRC(20)25** **5. Criminal Procedure Rules 2020: conjunction and disjunction** **CrimPRC(20)26** **6. Criminal Procedure Rules 2020: draft statutory instrument** **CrimPRC(20)27**

The chairman introduced the papers. In response to questions put by him to members, the Committee agreed:

- 1) to omit the provision for old extradition cases in rule 2.1 (see paper (20)27, paragraph 9).
- 2) to incorporate in rule 2.1 as proposed the temporary rule amendments made by the Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (see paper (20)27, paragraph 11).
- 3) in principle, to include the new ground rules hearing rule in Part 3, subject to any further discussion at agenda item 7 (see paper (20)27, paragraph 12).
- 4) to omit from rule 50.30 provision for the exercise of judicial functions by High Court staff now that corresponding provision appeared in rule 2.6 (see paper (20)27, paragraph 22).
- 5) to publish introductory notes with the 2020 Rules but not in the Rules (see paper (20)27, paragraph 28).

The chairman asked members to alert the Committee secretary to any unexpected omission or inclusion which they might find in the draft 2020 Rules and to any evident errors in time limits, connectives, cross-references or typography.

## **7. Part 3 Case management; Part 18 Measures to assist a witness or defendant to give evidence or participate: response to initial consultation on draft rules about ground rules hearings and intermediaries** **CrimPRC(20)28**

The chairman introduced the paper for the Committee, observing that the consultation had proved very worthwhile.

In response to questions put by him to members, the Committee:

- 1) agreed to include in the 2020 Rules rules 3.8 and 3.9 as shown amended in paper (20)28(c), but not yet to include the amendments to Part 18 shown in (20)28(d) (see paper (20)28, paragraphs 13, 15 and 17).
- 2) agreed in rule 3.8 (i) to substitute ‘disorder’ for ‘impediment’, in each place it occurred, and (ii) to retain the existing reference in rule 3.8(5)(b) to interpretation by an intermediary (see paper (20)28, paragraph 16).

Ms Blackstock proposed the substitution at (i). Other members agreed.

As to (ii), Mr Justice William Davis observed that in practice intermediaries indeed often acted as interpreters, and HH Judge Edmunds QC added that the role originally taken by intermediaries had been as such. The Director of Public Prosecutions commented that it was important not to accord to intermediaries the wrong status: they did not act as expert witnesses. Again, other members agreed.

- 3) approved the proposed amendments to the title to Part 18 and to the content of rule 18.1 the better to describe what would become the scope of the Part should the other proposed amendments be adopted (see paper (20)28, paragraphs 18 and 19). The Committee anticipated the possibility in due course of yet further amendments to the Part title and to rule 18.1 in the event that the temporary amendments made by the Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020 became permanent.

HH Judge Edmunds QC emphasised the importance of adopting an appropriate and informative permanent Part title in that latter event.

- 4) agreed to make no amendment to rule 18.2 but in rule 18.27(2)(d) for consistency of expression to substitute ‘give evidence’ for ‘participate as a witness’ (see paper 28, paragraphs 20 and 22).
- 5) agreed (i) in principle, to omit from rules 18.3 and 18.27(3) the requirement for an intermediary to be ‘suitably qualified’ (see paper 28, paragraphs 21 and 22), but directed that consideration be given to an alternative expression and to the inclusion of alternatives in a further consultation; and (ii) to omit from rule 18.27(2)(h) the references to specific types of medical report.

As to (i), Ms Blackstock cautioned against the proposal that there should be omitted any reference at all to a prospective intermediary’s suitability for the task. Mr Kenyon and Ms Pople QC agreed, the latter suggesting that alternative expressions might be considered.

As to (ii), Siân Jones observed that the rule was unnecessarily prescriptive and might be read to exclude reliance on other, equally useful, reports.

- 6) approved the proposed terms of an intermediary’s duty to the court set out in rule 18.30; agreed that an intermediary could not be required to accept appointment on terms which that intermediary was unwilling to accept; but agreed also that an intermediary who accepted appointment then must be subject to the court’s direction (see paper (20)28, paragraphs 25 and 34). The Committee endorsed a suggestion that this should be made clear in guidance to intermediaries.

Mr Justice William Davis observed that it would be a grave misunderstanding of an intermediary’s role to accord the intermediary’s recommendation the status of a requirement binding on the court. HH Judge Picton agreed: the decision was for the court, advised but not directed by the intermediary. HH Judge Edmunds QC also agreed, though adding that the court could not require an unwilling intermediary to participate. Other members concurred. The Director of Public Prosecutions commented that if, but only if, an intermediary accepted appointment then the

appointee had to obey the judge's directions. Ms Blackstock suggested that there should be made clear to intermediaries the duties that appointment imposed – it was that lack of clarity which had led to the dispute about the terms of appointment in the case of Biddle – though this was not a matter for rules. Mr Kenyon agreed. At the chairman's request, Ms Blackstock agreed that JUSTICE would consider this.

- 7) agreed to review the terms of the intermediary's oath or affirmation required by proposed rule 18.31 (current rule 18.7), taking into consideration corresponding current requirements for oaths or affirmations by witnesses and jurors (see paper (20)28, paragraph 26).

Ms Blackstock observed that the terms of the oath currently prescribed no longer corresponded with contemporary practice in the cases of those of diverse faiths. The chairman directed that consideration be given to aligning those terms with the current practice if possible.

- 8) agreed in principle to adopt for further consultation the proposed requirements in rule 18.32 for an intermediary's report (see paper (20)28, paragraphs 27 to 37) but subject to (i) an additional requirement for the intermediary to summarise in the report the content of the documents referenced at 18.32(1)(d); (ii) a suggested substitution of 'assessment' for 'examination' in the current draft, and consequentially of 'opinion' for 'assessment', perhaps including alternatives in a further consultation; and (iii) the retention but rephrasing of a requirement for the intermediary to include an assessment, or opinion, of the cumulative effect of a witness' several conditions, where relevant.

As to (i), Ms Blackstock suggested that a summary of information in documents received by the intermediary might assist the court. Remarking the objections raised to enquiries by intermediaries into a defendant's history, as those were reported by the Committee paper, the Director of Public Prosecutions observed that an obligation to summarise might be found equally unacceptable. The chairman considered the obligation suggested by Ms Blackstock to be a lesser one, and one that he hoped would be found unobjectionable.

As to (ii), Ms Blackstock suggested that 'examination' was inapt to an intermediary's function, but other members urged caution in adopting an alternative vocabulary.

As to (iii), Ms Blackstock agreed to propose an alternative formulation.

- 9) directed the preparation of a further invitation to comment on the draft rules as they had emerged from this discussion, to be addressed in the first instance to the Council of HM Circuit Judges, the Chief Magistrate and the Council of HM District Judges (Magistrates' Courts), the Magistrates' Association, the Magistrates' Leadership Executive and the Justices' Clerks' Society (see paper (20)28, paragraph 41).

Mr Justice William Davis emphasised the importance of inviting the views of the Council of Circuit Judges, and District Judge (Magistrates' Courts) Snow those of the Council of District Judges (Magistrates' Courts).

## **8. Part 48 Contempt of court: a recent judgment**

**CrimPRC(20)29**

The chairman introduced the paper for the Committee, observing that in the case of *R v Warner* the Court of Appeal had approved the content of the rule in issue. The Committee noted the judgment.

## **9. Any other business**

Mr Justice William Davis reported a request from the Senior Presiding Judge that case management group members be consulted as soon as possible on a proposed new form of triage for use by a magistrates' court when listing a trial. The judge understood that the form would be ready for circulation within a few days' time and suggested that group members' views be canvassed by email immediately thereafter. The Committee agreed.

The Chief Magistrate endorsed the proposed new form and recorded her gratitude to Ms Gadd and to Richard Sampson for their work in its preparation. The Director of Public Prosecutions welcomed also the guidance on which the new trial triage process proceeded, which had prompted efficiencies that he hoped would be continued after the current emergency. Assistant Commissioner Ephgrave agreed, adding that the proposed form had the support of the National Police Chiefs' Council

## **10. Dates of next meetings: Friday 12<sup>th</sup> June, 2020, and Friday 17<sup>th</sup> July, 2020**

The meeting closed at 2.55 pm.