

CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 12th NOVEMBER, 2021 at 1.30 p.m.

MEETING CONVENED BY VIDEO CONFERENCE

MINUTES

Present

Committee members

Lord Justice Fulford (chairman of the meeting)
Lord Justice William Davis
Mrs Justice Foster
HH Judge Edmunds QC
HH Judge Field QC
District Judge (Magistrates' Courts) Snow
Sue Gadd
Alison Pople QC
Paul Jarvis
Shade Abiodun
Edmund Smyth
Assistant Commissioner Nick Ephgrave

Also attending

Senior District Judge Goldspring, Chief Magistrate
Professor Cheryl Thomas QC, University College, London
Professor David Ormerod QC, University College, London
Elena Morecroft, Lord Chief Justice's Office
Alyson Sprawson, Senior Presiding Judge's Office
Richard Sampson, Chief Magistrate's Office
Sarah Hannah, Criminal Appeal Office
Nigel Gibbs, Crown Prosecution Service
Sophie Marlow, Attorney General's Office
Siân Jones, JC Service & HM Courts and Tribunals Service
David Barnes, JC Service & HM Courts and Tribunals Service
Trudy Lewis, HM Courts and Tribunals Service
Alice Adamson, Ministry of Justice
Richard Chown, Ministry of Justice
Hannah Henderson, Ministry of Justice
John Curtis, Criminal Cases Review Commission
Jonathan Solly (Committee secretariat)

Apologies are offered to anyone taking part whose name was 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 video conference in the difficult continuing circumstances. He expressed disappointment that once again it had not been possible to secure adequate accommodation for a meeting of Committee members in person. He hoped that accommodation could be found for the next meeting but

emphasised that members with a significant distance to travel could and should exercise their discretion. Arrangements for participation by video conference would continue to be made.

The chairman reported apologies for absence from Louise Bryant and the Director of Public Prosecutions; and, from among others who regularly attended, David Kenyon, Jodie Blackstock and Michelle Crotty.

2. Draft minutes of the meeting held on 8th October, 2021

The minutes were adopted, subject to any corrections to be drawn by members to the secretary's attention.

3. Case management group report

Mrs Justice Foster reported that in the absence of business demanding discussion the group had not met.

4. Part 3 (Case management): witness companions

CrimPRC(21)67

The chairman introduced the paper for the Committee, explaining that the purpose was to incorporate explicitly in rules that which Criminal Practice Directions already contemplated but described less clearly.

HH Judge Edmunds QC added that the proposal derived from the rules governing applications for witness supporters where a witness was to give evidence by live link as a statutory special measure. Here, however, arrangements were in the discretion of the court, and a difficulty that sometimes arose was a mistaken assumption that the law entitled witnesses to the assistance of a companion while giving oral evidence in the courtroom. Much guidance was available about what was permissible in giving a witness comfort and support. The rule would make clear that the judge was entitled, and required, to determine the arrangements.

The chairman reported written observations by David Kenyon who agreed with the proposal.

The Committee approved the proposed rule amendments.

5. Parts 5, 21, 24, 25 and 28: consultation by the National Police Chiefs' Council on disposal of records on the Police National Computer – further proposals

CrimPRC(21)68

The chairman introduced the paper for the Committee, asking whether members wished to respond again and, if so, whether the Committee should accept Option 4. He remained concerned about the proposed erasure of convictions and would prefer Option 1.

Assistant Commissioner Ephgrave reported that he had spoken to Deputy Chief Constable Malik, the leader of the review, who would in due course present proposals to the National Police Chiefs' Council. How they would be received there he was unable to predict. For his part he, too, preferred Option 1, and would canvass other Council members' opinions. He remained of the view that in principle it was better to control access to records than to dispose of the records themselves. The Lord Chief Justice's response to the consultation had been very helpful indeed, and this was such an important matter that the Committee should respond again, in Mr Ephgrave's view.

Nigel Gibbs reported that the Crown Prosecution Service, too, preferred option 1 and would be unwilling to accept anything else beyond Option 2.

HH Judge Edmunds QC noted that the consultation had been silent on the question of cost and wondered whether the significant potential cost of filtering records may have been overlooked.

Mr Ephgrave explained that the cost of the Police National Computer was met by the Home Office from the allocation for police services. Cost would be a consideration, especially because the current PNC technology was old and the Home Office was funding an upgrade. However, the review raised more important issues than cost and it was the principle of what, if anything, should be erased that mattered most. In any event, filtering could be, and already was, carried out automatically, or automatically subject to human oversight and confirmation, and need not require great expenditure. Like the CPS, he preferred Option 1; he could live with Option 2; but anything else would be unacceptable.

Summing up, the chairman agreed to discuss the meeting's conclusions with the Lord Chief Justice and would arrange for the Committee to respond unless the Lord Chief Justice preferred to do so himself. He took the Committee's view to be that option 1 was preferred but that Option 2 was not excluded.

6. Part 7 (Starting a prosecution in a magistrates' court): service on parent or guardian
CrimPRC(21)69

The chairman explained this as a proposal to incorporate in rules more clearly than hitherto a useful existing magistrates' courts practice, and one to which discussion of the Judicial Review and Courts Bill had drawn attention. He thanked District Judge (Magistrates' Courts) Snow and Siân Jones for prompting the discussion and for overseeing the preparation of the draft rule.

Siân Jones explained that the rule made clear what was done now anyway and thus simply incorporated good practice.

Judge Snow suggested that the note to rule 7.4 should be adjusted the better to paraphrase the requirements of section 34A of the Children and Young Persons Act 1933; the point being that the Act drew a distinction between those over and those under 16. Nigel Gibbs agreed, pointing out that that would be consistent, too, with the draft amendments to CrimPR Part 9 considered last time by the Committee.

The Committee approved the proposed rule amendments, subject to that elaboration of the note to rule 7.4.

7. Part 24 (Trial and sentence in a magistrates' court): time limit for plea of guilty by post
CrimPRC(21)70

The chairman introduced the paper for the Committee, observing that what was proposed would be an 'exhortatory' procedural time limit for the service of any written guilty plea that a defendant wished to enter in a case to which section 12 of the Magistrates' Courts Act 1980 applied.

Ms Gadd welcomed in principle the proposed time limit but preferred retention of the expression 'before the hearing date' to 'before the hearing begins', where that substitution was suggested.

HH Judge Edmunds QC questioned whether service on the day before the hearing date would be soon enough if the recipient staff would be in a HM Courts and Tribunals Service customer service centre, not at the court concerned.

Assistant Commissioner Ephgrave, agreeing, added that it seemed reasonable to him to require service much earlier than the day before the hearing date.

Ms Gadd was grateful for that suggestion but explained that if service within the meaning of the Part 4 rules had been achieved before the hearing date then in practice that would allow sufficient time to alert the court. Siân Jones added that the information would be transferred immediately to the court by electronic means.

The Committee:

- 1) approved the proposed amendments to rule 24.8(4), to the note to rule 24.8 and, consequentially, to rule 24.11(10), but
- 2) rejected the other proposed amendments, to rule 24.8(5) and (6).

8. Parts 24, 9, 28 and 5: committal for sentence – further revised rules

CrimPRC(21)71

The chairman introduced the paper for the Committee, recalling the history of the proposal and the case law which had prompted it. He drew attention to the proposed amendments to Parts 5, 9 and 28 and invited views on those first. In his view, what now was proposed seemed satisfactory.

Lord Justice William Davis agreed. He observed that the problem was not with the rules but with people remembering to express and record the opinions required by the legislation, which was absurdly prolix.

The chairman invited views on the proposed amendments to Part 24. District Judge (Magistrates' Courts) Snow suggested a rearrangement of rule 24.11(10) the better to describe the process required of the court on a committal for confiscation to the Crown Court. HH Judge Edmunds QC added that the requirements must include a clear obligation to record the opinion to which that paragraph referred, which could not be overlooked by those preparing the common platform system. Nigel Gibbs suggested that the proposed amendment to rule 5.4 would suffice.

The Committee approved the proposed rule amendments, subject to adjusting the amendments to rule 24.11(10) the better to describe the process required of the court.

9. Part 25 (Trial and sentence in the Crown Court): written directions to the jury

CrimPRC(21)72

CrimPRC(21)57

CrimPRC(21)66

The chairman recalled the previous Committee discussion and drew attention to the recent meeting reported by the paper. The draft rule now spelled out the proposed requirement.

Professor Thomas QC agreed that the revised draft now was satisfactory and spelled out established good practice. That questions for jurors to answer in reaching a verdict were a species of direction, as was the case, now was clear. Professor Ormerod QC agreed.

HH Judge Edmunds QC agreed with the proposed amendment insofar as it dealt with written directions but disagreed with the omission of reference to other written assistance. The reference to such assistance in the present rule had been deliberate, to correct a misunderstanding existing at the time when the rule first was made which had arisen precisely because such assistance could not aptly be described as a 'direction'. Only the day before this Committee meeting the judge had been asked whether it was permissible when summing up to provide a written chronology of material events and had been able to cite the present rule in support.

The chairman strongly supported the retention of a reference to that power and agreed with Judge Edmunds' suggestion, as did Professor Thomas QC and Professor Ormerod QC.

HH Judge Field QC also agreed that such other assistance often was given and that the reference to it should be retained. That apart, he was satisfied with the proposed amendment; but reported concerns which he had been asked to relay that the rule should not be too prescriptive, and certainly should not be mandatory. In the judge's view, the draft avoided that.

The chairman agreed that 'must ... as a general rule' did not equate with 'must'. He was grateful for that message to the Committee and recognised judges' concerns. Mrs Justice Foster strongly agreed.

Professor Thomas QC suggested that judges should be reassured that the rule did not, and was not intended to, change established good practice, merely to incorporate it. She observed that the written notice judges are now required to give to all sworn jurors at the start of the trial included directions of law, so to that extent judges do already give jurors one form of mandatory written directions.

Judge Edmunds asked whether the amended Criminal Practice Directions that were being prepared would retain references to, and examples of, 'other assistance' to jurors. Professor Ormerod QC confirmed that they would.

The Committee approved the proposed rule amendments, subject to:

- 1) retention of a reference to written assistance for jurors other than directions, and
- 2) the circulation in due course of explanations that (i) the rule was to codify, not change, existing practice, and (ii) written directions to jurors would continue to include the notice under the court's authority required by rule 26.3(b), (c) (notice of prohibited conduct, etc.).

10. Part 33 (Confiscation and related proceedings) and Part 45 (Costs): time limits for applications for costs **CrimPRC(21)73**

The chairman summarised the proposal as one to ensure consistency between rule 33.47 and the costs rules in Part 45. He thanked HH Judge Field QC and Paul Jarvis for their advice and contributions to these proposals. He pointed out that the recommendation was to amend rule 33.47 but not to adopt the other potential amendment to which the paper referred.

The Committee:

- 1) approved the proposed amendments to rule 33.47, but
- 2) rejected the proposed amendment to rule 45.7.

11. Part 42 (Appeal to the Court of Appeal in confiscation and related proceedings): arrangements for notifying those responsible for enforcement and those affected by the appeal **CrimPRC(21)74**

The chairman introduced the paper for the Committee, recalling the previous discussion and thanking Sarah Counsell of the Criminal Appeal Office, with others there, and Ms Gadd and Siân Jones, for their work on this proposal.

Sarah Hannah reported that the Registrar was content.

Siân Jones reported that some in the National Court Enforcement Service had questioned the lack of reference in rule 42.8 to the suspension of payment before the event to which the rule now referred. The chairman directed a revision of the draft to ensure that the operation of statutory suspension was made clear.

Sarah Hannah confirmed that although the rule applied only to those appeals which had been in issue in the case of *Parker*, in future, as a matter of practice, the Criminal Appeal

Office would notify the National Court Enforcement Service of any appeal affecting the enforcement of a confiscation order.

The Committee approved in principle the proposed rule amendments, but subject to the inclusion of a more explicit reference to the effect of section 141(1) of the Sentencing Act 2020 (suspension of compensation order pending appeal).

12. Content of December 2021 statutory instrument

CrimPRC(21)75

The chairman introduced the paper for the Committee, inviting any comments that members might have.

The Committee endorsed the list of proposed amendments.

13. Any other business

The Committee expressed its gratitude to Alyson Sprawson, the Legal and Policy Adviser to the Senior Presiding Judge, on the occasion of her imminent retirement.

**14. Dates of next meetings: Friday 10th December, 2021, and
Friday 4th February, 2022**

The meeting closed at 2.45 pm.