



Neutral Citation Number: [2015] EWCA Crim 1253

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2015

Before :

LORD CHIEF JUSTICE OF ENGLAND AND WALES

Criminal Practice Directions
Amendment No. 4

AMENDMENT NO. 4 TO THE CRIMINAL PRACTICE DIRECTIONS

Amendment no. 4 to the Criminal Practice Directions is handed down by the Lord Chief Justice on 16 July 2015. It replaces two practice directions:

- 1. The practice direction on case management at CPD I General matters 3A Case management; and**
- 2. The practice direction on jury irregularities at CPD VI Trial 39M Jury irregularity.**

The replacement practice direction on case management will take effect from 5 October 2015 and the replacement practice direction on jury irregularities will take effect from 16 July 2015.

The replacement practice directions are set out below.

REPLACEMENT PRACTICE DIRECTION ON CASE MANAGEMENT

CPD I General matters 3A: CASE MANAGEMENT

- 3A.1 CrimPR 1.1(2)(e) requires that cases be dealt with efficiently and expeditiously. CrimPR 3.2 requires the court to further the overriding objective by actively managing the case, for example:
- a) When dealing with an offence which is triable only on indictment the court must ask the defendant whether he or she intends to plead guilty at the Crown Court (CrimPR 9.7(5));
 - b) On a guilty plea, the court must pass sentence at the earliest opportunity, in accordance with CrimPR 24.11(9)(a) (magistrates' courts) and 25.16(7)(a) (the Crown Court).
- 3A.2 Given these duties, magistrates' courts and the Crown Court therefore will proceed as described in paragraphs 3A.3 to 3A.28 below. The parties will be expected to have prepared in accordance with CrimPR 3.3(1) to avoid unnecessary and wasted hearings. They will be expected to have communicated with each other by the time of the first hearing; to report to the court on that communication at the first hearing; and to continue thereafter to communicate with each other and with the court officer, in accordance with CrimPR 3.3(2).
- 3A.3 There is a Preparation for Effective Trial form for use in the magistrates' courts, and a Plea and Trial Preparation Hearing form for use in the Crown Court, each of which must be used as appropriate in connection with CrimPR Part 3: see paragraph 5A.2 of these Practice Directions. Versions of those forms in pdf and

Word, together with guidance notes, are available on the Criminal Procedure Rules pages of the Ministry of Justice website.

Case progression and trial preparation in magistrates' courts

3A.4 CrimPR 8.3 applies in all cases and requires the prosecutor to serve:

- i. a summary of the circumstances of the offence;
- ii. any account given by the defendant in interview, whether contained in that summary or in another document;
- iii. any written witness statement or exhibit that the prosecutor then has available and considers material to plea or to the allocation of the case for trial or sentence;
- iv. a list of the defendant's criminal record, if any; and
- v. any available statement of the effect of the offence on a victim, a victim's family or others.

The details must include sufficient information to allow the defendant and the court at the first hearing to take an informed view:

- i. on plea;
- ii. on venue for trial (if applicable);
- iii. for the purposes of case management; or
- iv. for the purposes of sentencing (including committal for sentence, if applicable).

Defendant in custody

3A.5 If the defendant has been detained in custody after being charged with an offence which is indictable only or triable either way, at the first hearing a magistrates' court will proceed at once with the allocation of the case for trial, where appropriate, and, if so required, with the sending of the defendant to the Crown Court for trial. The court will be expected to ask for and record any indication of plea and issues for trial to assist the Crown Court.

3A.6 If the offence charged is triable only summarily, or if at that hearing the case is allocated for summary trial, the court will forthwith give such directions as are necessary, either (on a guilty plea) to prepare for sentencing, or for a trial.

Defendant on bail

3A.7 If the defendant has been released on bail after being charged, the case must be listed for the first hearing 14 days after charge, or the next available court date thereafter when the prosecutor anticipates a guilty plea which is likely to be sentenced in the magistrates' court. In cases where there is an anticipated not guilty plea or the case is likely to be sent or committed to the Crown Court for either trial or sentence, then it must be listed for the first

hearing 28 days after charge or the next available court date thereafter.

Guilty plea in the magistrates' courts

3A.8 Where a defendant pleads guilty or indicates a guilty plea in a magistrates' court the court should consider whether a pre-sentence report – a stand down report if possible – is necessary.

Guilty plea in the Crown Court

3A.9 Where a magistrates' court is considering committal for sentence or the defendant has indicated an intention to plead guilty in a matter which is to be sent to the Crown Court, the magistrates' court should request the preparation of a pre-sentence report for the Crown Court's use if the magistrates' court considers that:

- (a) there is a realistic alternative to a custodial sentence; or
- (b) the defendant may satisfy the criteria for classification as a dangerous offender; or
- (c) there is some other appropriate reason for doing so.

3A.10 When a magistrates' court sends a case to the Crown Court for trial and the defendant indicates an intention to plead guilty at the Crown Court, then that magistrates' court must set a date for a Plea and Trial Preparation Hearing at the Crown Court, in accordance with CrimPR 9.7(5)(a)(i).

Case sent for Crown Court trial: no indication of guilty plea

3A.11 In any case sent to the Crown Court for trial, other than one in which the defendant indicates an intention to plead guilty, the magistrates' court must set a date for a Plea and Trial Preparation Hearing, in accordance with CrimPR 9.7(5)(a)(ii). The Plea and Trial Preparation Hearing must be held within 28 days of sending, unless the standard directions of the Presiding Judges of the circuit direct otherwise. Paragraph 3A.16 below additionally applies to the arrangements for such hearings. A magistrates' court may give other directions appropriate to the needs of the case, in accordance with CrimPR 3.5(3), and in accordance with any standard directions issued by the Presiding Judges of the circuit.

Defendant on bail: anticipated not guilty plea

3A.12 Where the defendant has been released on bail after being charged, and where the prosecutor does not anticipate a guilty plea at the first hearing in a magistrates' court, then it is essential that the initial details of the prosecution case that are provided for that first hearing are sufficient to assist the court, in order to identify the real issues and to give appropriate directions for an effective trial (regardless of whether the trial is to be heard in the magistrates' court or the Crown Court). In these circumstances, unless there is good reason not to do so, the prosecution should

make available the following material in advance of the first hearing in the magistrates' court:

- (a) A summary of the circumstances of the offence(s) including a summary of any account given by the defendant in interview;
- (b) Statements and exhibits that the prosecution has identified as being of importance for the purpose of plea or initial case management, including any relevant CCTV that would be relied upon at trial and any Streamlined Forensic Report;
- (c) Details of witness availability, as far as they are known at that hearing;
- (d) Defendant's criminal record;
- (e) Victim Personal Statements if provided;
- (f) An indication of any medical or other expert evidence that the prosecution is likely to adduce in relation to a victim or the defendant;
- (g) Any information as to special measures, bad character or hearsay, where applicable.

3A.13 In addition to the material required by CrimPR Part 8, the information required by the Preparation for Effective Trial form must be available to be submitted at the first hearing, and the parties must complete that form, in accordance with the guidance published with it. Where there is to be a contested trial in a magistrates' court, that form includes directions and a timetable that will apply in every case unless the court otherwise orders.

3A.14 Nothing in paragraph 3A.12-3A.13 shall preclude the court from taking a plea pursuant to CrimPR 3.9(2)(b) at the first hearing and for the court to case manage as far as practicable under Part 3 CrimPR.

Exercise of magistrates' court's powers

3A.15 In accordance with CrimPR 9.1, sections 49, 51(13) and 51A(11) of the Crime and Disorder Act 1998, and sections 17E, 18(5) and 24D of the Magistrates' Courts Act 1980 a single justice can:

- a) allocate and send for trial;
- b) take an indication of a guilty plea (but not pass sentence);
- c) take a not guilty plea and give directions for the preparation of trial including:
 - i. timetable for the proceedings;
 - ii. the attendance of the parties;
 - iii. the service of documents;
 - iv. the manner in which evidence is to be given.

Case progression and trial preparation in the Crown Court

Plea and Trial Preparation Hearing

3A.16 In a case in which a magistrates' court has directed a Plea and Trial Preparation Hearing, the period which elapses between sending

for trial and the date of that hearing must be consistent within each circuit. In every case, the time allowed for the conduct of the Plea and Trial Preparation Hearing must be sufficient for effective trial preparation. It is expected in every case that an indictment will be lodged at least 7 days in advance of the hearing. Please see the Note to the Practice Direction.

3A.17 In a case in which the defendant, not having done so before, indicates an intention to plead guilty to his representative after being sent for trial but before the Plea and Trial Preparation Hearing, the defence representative will notify the Crown Court and the prosecution forthwith. The court will ensure there is sufficient time at the Plea and Trial Preparation Hearing for sentence and a Judge should at once request the preparation of a pre-sentence report if it appears to the court that either:

- (a) there is a realistic alternative to a custodial sentence; or
- (b) the defendant may satisfy the criteria for classification as a dangerous offender; or
- (c) there is some other appropriate reason for doing so.

3A.18 If at the Plea and Trial Preparation Hearing the defendant pleads guilty and no pre-sentence report has been prepared, if possible the court should obtain a stand down report.

3A.19 Where the defendant was remanded in custody after being charged and was sent for trial without initial details of the prosecution case having been served, then at least 7 days before the Plea and Trial Preparation Hearing the prosecutor should serve, as a minimum, the material identified in paragraph 3A.12 above. If at the Plea and Trial Preparation Hearing the defendant does not plead guilty, the court will be expected to identify the issues in the case and give appropriate directions for an effective trial. Please see the Note to the Practice Direction.

3A.20 At the Plea and Trial Preparation Hearing, in addition to the material required by paragraph 3A.12 above, the prosecutor must serve sufficient evidence to enable the court to case manage effectively without the need for a further case management hearing, unless the case falls within paragraph 3A.21. In addition, the information required by the Plea and Trial Preparation Hearing form must be available to the court at that hearing, and it must have been discussed between the parties in advance. The prosecutor must provide details of the availability of likely prosecution witnesses so that a trial date can immediately be arranged if the defendant does not plead guilty.

Further case management hearing

3A.21 In accordance with CrimPR 3.13(1)(c), after the Plea and Trial Preparation Hearing there will be no further case management hearing before the trial unless:

- (i) a condition listed in that rule is met; and
- (ii) the court so directs, in order to further the overriding objective.

The directions to be given at the Plea and Trial Preparation Hearing therefore may include a direction for a further case management hearing, but usually will do so only in one of the following cases:

- (a) Class 1 cases;
- (b) Class 2 cases which carry a maximum penalty of 10 years or more;
- (c) cases involving death by driving (whether dangerous or careless), or death in the workplace;
- (d) cases involving a vulnerable witness;
- (e) cases in which the defendant is a child or otherwise under a disability, or requires special assistance;
- (f) cases in which there is a corporate or unrepresented defendant;
- (g) cases in which the expected trial length is such that a further case management hearing is desirable and any case in which the trial is likely to last longer than four weeks;
- (h) cases in which expert evidence is to be introduced;
- (i) cases in which a party requests a hearing to enter a plea;
- (j) cases in which an application to dismiss or stay has been made;
- (k) cases in which arraignment has not taken place, whether because of an issue relating to fitness to plead, or abuse of process or sufficiency of evidence, or for any other reason;
- (l) cases in which there are likely to be linked criminal and care directions in accordance with the 2013 Protocol.

3A.22 If a further case management hearing is directed, a defendant in custody will not usually be expected to attend in person, unless the court otherwise directs.

Compliance hearing

3A.23 If a party fails to comply with a case management direction, that party may be required to attend the court to explain the failure. Unless the court otherwise directs a defendant in custody will not usually be expected to attend. See paragraph 3A.26-3A.28 below.

Conduct of case progression hearings

3A.24 As far as possible, case progression should be managed without a hearing in the courtroom, using electronic communication in accordance with CrimPR 3.5(2)(d). Court staff should be nominated to conduct case progression as part of their role, in accordance with CrimPR 3.4(2). To aid effective communication

the prosecution and defence representative should notify the court and provide details of who shall be dealing with the case at the earliest opportunity.

Completion of Effective Trial Monitoring form

3A.25 It is imperative that the Effective Trial Monitoring form (as devised and issued by Her Majesty's Courts and Tribunals Service) is accurately completed by the parties for all cases that have been listed for trial. Advocates must engage with the process by providing the relevant details and completing the form.

Compliance courts

3A.26 To ensure effective compliance with directions of the courts made in accordance with the Criminal Procedure Rules and the overriding objective, courts should maintain a record whenever a party to the proceedings has failed to comply with a direction made by the court. The parties may have to attend a hearing to explain any lack of compliance.

3A.27 These hearings may be conducted by live link facilities or via other electronic means, as the court may direct.

3A.28 It will be for the Presiding Judges, Resident Judge and Justices' Clerks to decide locally how often compliance courts should be held, depending on the scale and nature of the problem at each court centre.

Note to the Practice Direction

In 3A.16 and 3A.19 the reference to "at least 7 days" in advance of the hearing is necessitated by the fact that, for the time being, different circuits have different timescales for the Plea and Trial Preparation Hearing. Had this not been so, the paragraphs would have been drafted forward from the date of sending rather than backwards from the date of the Plea and Trial Preparation Hearing.

REPLACEMENT PRACTICE DIRECTION ON JURY IRREGULARITIES

CPD VI Trial 39M: JURIES: JURY IRREGULARITIES

39M.1 This practice direction replaces the protocol regarding jury irregularities issued by the President of the Queen's Bench Division in November 2012, and the subsequent practice direction, in light of sections 20A to 20D of the Juries Act 1974 and the associated repeal of section 8 of the Contempt of Court Act 1981 (confidentiality of jury's deliberations).

It applies to juries sworn on or after 13 April 2015.

- 39M.2 A jury irregularity is anything that may prevent one or more jurors from remaining faithful to their oath or affirmation to 'faithfully try the defendant and give a true verdict according to the evidence.' Jury irregularities take many forms. Some are clear-cut such as a juror conducting research about the case or an attempt to suborn or intimidate a juror. Others are less clear-cut – for example, when there is potential bias or friction between jurors.
- 39M.3 A jury irregularity may involve contempt of court and / or the commission of an offence by or in relation to a juror.
- 39M.4 Under the previous version of this practice direction, the Crown Court required approval from the Vice-President of the Court of Appeal (Criminal Division) (CACD) prior to providing a juror's details to the police for the purposes of an investigation into a jury irregularity. Such approval is no longer required. Provision of a juror's details to the police is now a matter for the Crown Court.

JURY IRREGULARITY DURING TRIAL

- 39M.5 A jury irregularity that comes to light during a trial may impact on the conduct of the trial. It may also involve contempt of court and / or the commission of an offence by or in relation to a juror. **The primary concern of the judge should be the impact on the trial.**
- 39M.6 A jury irregularity should be drawn to the attention of the judge in the absence of the jury as soon as it becomes known.
- 39M.7 **When the judge becomes aware of a jury irregularity, the judge should follow the procedure set out below:**
- STEP 1: Consider isolating juror(s)**
 - STEP 2: Consult with advocates**
 - STEP 3: Consider appropriate provisional measures (which may include surrender / seizure of electronic communications devices and taking defendant into custody)**
 - STEP 4: Seek to establish basic facts of jury irregularity**
 - STEP 5: Further consult with advocates**
 - STEP 6: Decide what to do in relation to conduct of trial**
 - STEP 7: Consider ancillary matters (contempt in face of court and / or commission of criminal offence)**
- STEP 1: Consider isolating juror(s)**

39M.8 The judge should consider whether the juror(s) concerned should be isolated from the rest of the jury, particularly if the juror(s) may have conducted research about the case.

39M.9 If two or more jurors are concerned, the judge should consider whether they should also be isolated from each other, particularly if one juror has made an accusation against another.

STEP 2: Consult with advocates

39M.10 The judge should consult with the advocates and invite submissions about appropriate provisional measures (Step 3) and how to go about establishing the basic facts of the jury irregularity (Step 4).

39M.11 The consultation should be conducted

- in open court;
- in the presence of the defendant; and
- with all parties represented

unless there is good reason not to do so.

39M.12 If the jury irregularity involves a suspicion about the conduct of the defendant or another party, there may be good reason for the consultation to take place in the absence of the defendant or the other party. There may also be good reason for it to take place in private. If so, the proper location is in the court room, with DARTS recording, rather than in the judge's room.

39M.13 If the jury irregularity relates to the jury's deliberations, the judge should warn all those present that it is an offence to disclose, solicit or obtain information about a jury's deliberations (section 20D(1) of the Juries Act 1974 – see 39M.35 to 39M.38 regarding the offence and exceptions). This would include disclosing information about the jury's deliberations divulged in court during consultation with the advocates (Step 2 and Step 5) or when seeking to establish the basic facts of the jury irregularity (Step 4). The judge should emphasise that the advocates, court staff and those in the public gallery would commit the offence by explaining to another what is said in court about the jury's deliberations.

STEP 3: Consider appropriate provisional measures

39M.14 The judge should consider appropriate provisional measures which may include surrender / seizure of

electronic communications devices and taking the defendant into custody.

- **Surrender / seizure of electronic communications devices**

39M.15 The judge should consider whether to make an order under section 15A(1) of the Juries Act 1974 requiring the juror(s) concerned to surrender electronic communications devices, such as mobile telephones or smart phones.

39M.16 Having made an order for surrender, the judge may require a court security officer to search a juror to determine whether the juror has complied with the order. Section 54A of the Courts Act 2003 contains the court security officer's powers of search and seizure.

39M.17 Section 15A(5) of the Juries Act 1974 provides that it is contempt of court for a juror to fail to surrender an electronic communications device in accordance with an order for surrender (see 39M.29 to 39M.30 regarding the procedure for dealing with such a contempt).

39M.18 Any electronic communications device surrendered or seized under these provisions should be kept safe by the court until returned to the juror or handed to the police as evidence.

- **Taking defendant into custody**

39M.19 If the defendant is on bail, and the jury irregularity involves a suspicion about the defendant's conduct, the judge should consider taking the defendant into custody. If that suspicion involves an attempt to suborn or intimidate a juror, the defendant should be taken into custody.

STEP 4: Seek to establish basic facts of jury irregularity

39M.20 The judge should seek to establish the basic facts of the jury irregularity for the purpose of determining how to proceed in relation to the conduct of the trial. The judge's enquiries may involve having the juror(s) concerned write a note of explanation and / or questioning the juror(s). The judge may enquire whether the juror(s) feel able to continue and remain faithful to their oath or affirmation. If there is questioning, each juror should be questioned separately, in the absence of the rest of the jury, unless there is good reason not to do so.

39M.21 In accordance with 39M.10 to 39M.13, the enquiries should be conducted in open court; in the presence of the defendant; and

with all parties represented unless there is good reason not to do so.

STEP 5: Further consult with advocates

39M.22 The judge should further consult with the advocates and invite submissions about how to proceed in relation to the conduct of the trial and what should be said to the jury (Step 6).

39M.23 In accordance with 39M.10 to 39M.13, the consultation should be conducted in open court; in the presence of the defendant; and with all parties represented unless there is good reason not to do so.

STEP 6: Decide what to do in relation to conduct of trial

39M.24 When deciding how to proceed, the judge may take time to reflect.

39M.25 Considerations may include the stage the trial has reached. The judge should be alert to attempts by the defendant or others to thwart the trial. In cases of potential bias, the judge should consider whether a fair minded and informed observer would conclude that there was a real possibility that the juror(s) or jury would be biased (*Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357).

39M.26 **In relation to the conduct of the trial, there are three possibilities:**

1. Take no action and continue with the trial

If so, the judge should consider what, if anything, to say to the jury. For example, the judge may reassure the jury nothing untoward has happened or remind them their verdict is a decision of the whole jury and that they should try to work together. Anything said should be tailored to the circumstances of the case.

2. Discharge the juror(s) concerned and continue with the trial

If so, the judge should consider what to say to the discharged juror(s) and the jurors who remain. All jurors should be warned not to discuss what has happened.

3. Discharge the whole jury

If so, the judge should consider what to say to the jury and they should be warned not to discuss what has happened.

If the judge is satisfied that jury tampering has taken place, depending on the circumstances, the judge may continue the trial without a jury (section 46(3) of the Criminal Justice Act 2003) or order a new trial without a jury (section 46(5) of the Criminal Justice Act 2003). Alternatively, the judge may re-list the trial. If there is a real and present danger of jury tampering in the new trial, the prosecution may apply for a trial without a jury (section 44 of the Criminal Justice Act 2003).

STEP 7: Consider ancillary matters

39M.27 A jury irregularity may also involve contempt in the face of the court and / or the commission of a criminal offence. The possibilities include the following:

- **Contempt in the face of the court by a juror**
- **An offence by a juror or a non-juror under the Juries Act 1974**

Offences that may be committed by jurors are researching the case, sharing research, engaging in prohibited conduct or disclosing information about the jury's deliberations (sections 20A to 20D of the Juries Act 1974). Non-jurors may commit the offence of disclosing, soliciting or obtaining information about the jury's deliberations (section 20D of the Juries Act 1974).

- **An offence by juror or a non-juror other than under the Juries Act 1974** A juror may commit an offence such as assault or theft. A non-juror may commit an offence in relation to a juror such as attempting to pervert the course of justice – for example, if the defendant or another attempts to suborn or intimidate a juror.

- **Contempt in the face of the court by a juror**

39M.28 If a juror commits contempt in the face of the court, the juror's conduct may also constitute an offence. If so, the judge should decide whether to deal with the juror summarily under the procedure for contempt in the face of the court or refer the matter to the Attorney General's Office or the police (see 39M.31 and 39M.33).

39M.29 In the case of a *minor and clear* contempt in the face of the court, the judge may deal with the juror summarily. The judge should follow the procedure in section 2 of Part 62 of the Criminal Procedure Rules. The judge should also have regard to the practice direction regarding contempt of court issued in March 2015 (Practice Direction: Committal for Contempt of Court –

Open Court), which emphasises the principle of open justice in relation to proceedings for contempt before all courts.

39M.30 If a juror fails to comply with an order for surrender of an electronic communications device (see 39M.15 to 39M.18), the judge should deal with the juror summarily following the procedure for contempt in the face of the court.

- **Offence by a juror or non-juror under the Juries Act 1974**

39M.31 If it appears that an offence under the Juries Act 1974 may have been committed by a juror or non-juror (and the matter has not been dealt with summarily under the procedure for contempt in the face of the court), **the judge** should contact the Attorney General's Office to consider a police investigation, setting out the position neutrally. The officer in the case should not be asked to investigate.

Contact details for the Attorney General's Office are set out at the end of this practice direction.

39M.32 If relevant to an investigation, any electronic communications device surrendered or seized pursuant to an order for surrender should be passed to the police as soon as practicable.

- **Offence by a juror or non-juror other than under the Juries Act 1974**

39M.33 If it appears that an offence, other than an offence under the Juries Act 1974, may have been committed by a juror or non-juror (and the matter has not been dealt with summarily under the procedure for contempt in the face of the court), **the judge or a member of court staff** should contact the police setting out the position neutrally. The officer in the case should not be asked to investigate.

39M.34 If relevant to an investigation, any electronic communications device surrendered or seized pursuant to an order for surrender should be passed to the police as soon as practicable.

Other matters to consider

- **Jury deliberations**

39M.35 **In light of the offence of disclosing, soliciting or obtaining information about a jury's deliberations (section 20D(1) of the Juries Act 1974), great care is required if a jury irregularity relates to the jury's deliberations.**

39M.36 *During the trial*, there are exceptions to this offence that enable the judge (and only the judge) to:

- Seek to establish the basic facts of a jury irregularity involving the jury's deliberations (Step 4); and
- Disclose information about the jury's deliberations to the Attorney General's Office if it appears that an offence may have been committed (Step 7).

39M.37 With regard to seeking to establish the basic facts of a jury irregularity involving the jury's deliberations (Step 4), it is to be noted that during the trial it is not an offence for the judge to disclose, solicit or obtain information about the jury's deliberations for the purposes of dealing with the case (sections 20E(2)(a) and 20G(1) of the Juries Act 1974).

39M.38 With regard to disclosing information about the jury's deliberations to the Attorney General's Office if it appears that an offence may have been committed (Step 7), it is to be noted that during the trial:

- It is not an offence for the judge to disclose information about the jury's deliberations for the purposes of an investigation by a relevant investigator into whether an offence or contempt of court has been committed by or in relation to a juror (section 20E(2)(b) of the Juries Act 1974); and
- A relevant investigator means a police force or the Attorney General (section 20E(5) of the Juries Act 1974).

- **Minimum number of jurors**

39M.39 If it is decided to discharge one or more jurors (Step 6), a minimum of nine jurors must remain if the trial is to continue (section 16(1) of the Juries Act 1974).

- **Preparation of statement by judge**

39M.40 If a jury irregularity occurs, and the trial continues, the judge should have regard to the remarks of Lord Hope in *R v Connors and Mirza* [2004] UKHL 2 at [127] and [128], [2004] 1 AC 1118, [2004] 2 Cr App R 8 and consider whether to prepare a statement that could be used in an application for leave to appeal or an appeal relating to the jury irregularity.

JURY IRREGULARITY AFTER JURY DISCHARGED

39M.41 A jury irregularity that comes to light after the jury has been discharged may involve the commission of an offence by or in relation to a juror. It may also provide a ground of appeal.

39M.42 **A jury irregularity after the jury has been discharged may come to the attention of the:**

- **Trial judge or court**
- **Registrar of Criminal Appeals (the Registrar)**
- **Prosecution**
- **Defence**

- **Role of the trial judge or court**

39M.43 The judge has no jurisdiction in relation to a jury irregularity that comes to light after the jury has been discharged (*R v Thompson and others* [2010] EWCA Crim 1623, [2011] 1 WLR 200, [2010] 2 Cr App R 27A). The jury will be deemed to have been discharged when all verdicts on all defendants have been delivered or when the jury has been discharged from giving all verdicts on all defendants.

39M.44 The judge will be *functus officio* in relation to a jury irregularity that comes to light during an adjournment between verdict and sentence. The judge should proceed to sentence unless there is good reason not to do so.

39M.45 In practice, a jury irregularity often comes to light when the judge or court receives a communication from a former juror.

39M.46 If a jury irregularity comes to the attention of a judge or court after the jury has been discharged, and regardless of the result of the trial, the judge or a member of court staff should contact the Registrar setting out the position neutrally. Any communication from a former juror should be forwarded to the Registrar.

Contact details for the Registrar are set out at the end of this practice direction.

- **Role of the Registrar**

39M.47 If a jury irregularity comes to the attention of the Registrar after the jury has been discharged, and regardless of the result of the trial, the Registrar should consider if it appears that an offence may have been committed by or in relation to a juror. The Registrar should also consider if there may be a ground of appeal.

39M.48 When deciding how to proceed, particularly in relation to a communication from a former juror, the Registrar may seek the direction of the Vice-President of the Court of Appeal (Criminal Division) (CACD) or another judge of the CACD in accordance with instructions from the Vice-President.

39M.49 If it appears that an offence may have been committed by or in relation to a juror, the Registrar should contact the Private Office of the Director of Public Prosecutions to consider a police investigation.

39M.50 If there may be a ground of appeal, the Registrar should inform the defence.

39M.51 If a communication from a former juror is not of legal significance, the Registrar should respond explaining that no action is required. An example of such a communication is if it is restricted to a general complaint about the verdict from a dissenting juror or an expression of doubt or second thoughts.

- **Role of the prosecution**

39M.52 If a jury irregularity comes to the attention of the prosecution after the jury has been discharged, which may provide a ground of appeal, they should notify the defence in accordance with their duties to act fairly and assist in the administration of justice (*R v Makin* [2004] EWCA Crim 1607, 148 SJLB 821).

- **Role of the defence**

39M.53 If a jury irregularity comes to the attention of the defence after the jury has been discharged, which provides an arguable ground of appeal, an application for leave to appeal may be made.

Other matters to consider

- **Jury deliberations**

39M.54 **In light of the offence of disclosing, soliciting or obtaining information about a jury's deliberations (section 20D(1) of the Juries Act 1974), great care is required if a jury irregularity relates to the jury's deliberations.**

39M.55 *After the jury has been discharged*, there are exceptions to this offence that enable a judge, a member of court staff, the Registrar, the prosecution and the defence to disclose information about the jury's deliberations if it appears that an offence may have been committed by or in relation to a juror or if there may be a ground of appeal.

39M.56 For example, it is to be noted that:

- After the jury has been discharged, it is not an offence for a person to disclose information about the jury's deliberations to defined persons if the person reasonably believes that an offence or contempt of court may have been committed by or in relation to a juror or the conduct of a juror may provide grounds of appeal (section 20F(1) (2) of the Juries Act 1974).
- The defined persons to whom such information may be disclosed are a member of a police force, a judge of the CACD, the Registrar of Criminal Appeals (the Registrar), a judge where the trial took place or a member of court staff where the trial took place who would reasonably be expected to disclose the information only to one of the aforementioned defined persons (section 20F(2) of the Juries Act 1974).
- After the jury has been discharged, it is not an offence for a judge of the CACD or the Registrar to disclose information about the jury's deliberations for the purposes of an investigation by a relevant investigator into whether an offence or contempt of court has been committed by or in relation to a juror or the conduct of a juror may provide grounds of appeal (section 20F(4) of the Juries Act 1974).
- A relevant investigator means a police force, the Attorney General, the Criminal Cases Review Commission (CCRC) or the Crown Prosecution Service (section 20F(10) of the Juries Act 1974).
- **Investigation by the Criminal Cases Review Commission (CCRC)**

39M.57 If an application for leave to appeal, or an appeal, includes a ground of appeal relating to a jury irregularity, the Registrar may refer the case to the Full Court to decide whether to direct the CCRC to conduct an investigation under section 23A of the Criminal Appeal Act 1968.

39M.58 If the Court directs the CCRC to conduct an investigation, directions should be given as to the scope of the investigation.

CONTACT DETAILS

Attorney General's Office

Contempt.SharedMailbox@attorneygeneral.gsi.gov.uk

Telephone: 020 7271 2492

The Registrar

penny.donnelly@hmcts.x.gsi.gov.uk (Secretary) or
criminalappealoffice.generaloffice@hmcts.gsi.gov.uk

Telephone: 020 7947 6103 (Secretary) or 020 7947 6011

The Rt Hon The Lord Thomas of Cwmgiedd
Lord Chief Justice of England and Wales
16 July 2015