



SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

GUIDANCE

1. This Guidance applies in respect of criminal cases in the Crown Court where action by members of the Criminal Bar Association (“the CBA action”) results in advocates refusing to accept returns, with the result that one party or more is without representation by an advocate. It is issued in anticipation of this action beginning on 11 April 2022 and will apply for the duration of the CBA action, unless varied or withdrawn in the meantime. Given recent problems in securing representation by advocates for other reasons, it also covers the situation where the prosecution is not represented.

Over Arching Principles

2. The over-arching principle is that all Crown Court hearings must be conducted justly and in accordance with the overriding objective.
3. The action takes place at a time when the backlog of cases in the Crown Court is substantial. The court will endeavour to progress cases as efficiently as it can in the interests of all those involved in the criminal justice system including defendants, victims, witnesses, and in the wider public interest.
4. Lists will be created in the usual way, on the assumption that advocates will attend to conduct hearings. This guidance covers cases where this does not occur.
5. The court is not a party to the dispute and the judiciary will express no view about it. A hearing in a criminal case should not be used by any party or advocate to make any comments about the dispute or its merits.
6. It is the responsibility of the instructed advocate who is required to return a case, but is unable to do so, to advise their instructing solicitor and the court as soon as it becomes

clear that there is a serious risk that their brief will not be covered. They should, at the same time, provide the court with their availability to cover the case on other dates.

Unrepresented defendants

7. Where a defendant is not represented but wishes to be represented and has the necessary representation order, the judge conducting any hearing will be required to decide whether that hearing can proceed fairly.
8. Where a hearing does proceed with an unrepresented defendant, it will be the duty of the judge to make appropriate allowances and to offer assistance to the defendant. The Criminal Procedure Rules require the court to be satisfied that each allegation has been explained to the defendant in terms which they can understand. The prosecution advocate also has a responsibility to assist the court in that regard. It is not the role of the court, or of the prosecution advocate, to provide representation for the defendant. The judge may explain the law to the defendant but must not give legal advice.
9. The court will make such efforts as are practicable to secure representation for defendants who wish to have it. This may include seeking assistance from advocates who are not participating in the dispute or seeking help from the Public Defender Service.

The prosecution is unrepresented

10. The court staff at the direction of the judge will ensure that there is a proper channel of communication between it and the relevant Chief Crown Prosecutor so that it is kept informed of cases where the prosecution is not to be represented. Where that is the case, the judge conducting any hearing will be required to decide whether that hearing can proceed fairly.
11. The Crown Prosecution Service and other prosecuting authorities will use their best endeavours to ensure that they are represented at hearings, and that the available advocacy resources are used to the best possible advantage.

Prior to the PTPH

12. It is the responsibility of the instructed advocate to inform the court in advance of the date of hearing what plea is anticipated at the PTPH.
13. Where the court is informed in advance that one or more party will not be represented at the PTPH because of the CBA action, a judge will decide:-

- a. Whether the PTPH should be adjourned to a date within the period specified by the Criminal Practice Directions by which a PTPH must be held.
- b. Whether representation by the instructed defence advocate may be secured by fixing a date and time for the PTPH which will enable their attendance remotely.
- c. Whether to hold a PTR (probably remotely) at which the further conduct of the case can be discussed with instructed advocates.

At the PTPH

14. Where the prosecution is not able to secure representation by an advocate, it must nonetheless comply with its responsibilities in respect of service of its case, disclosure, the preferring of an indictment and the completion of the PTPH form in advance of the hearing.
15. This will be done using the Digital Case System in the usual way. Where the defendant is not represented, the materials must additionally be made available to the defendant in hard copy on or before the day of the hearing by the prosecution.
16. The court will endeavour to hold an effective PTPH in every case, including arraignment and the fixing of a trial date.
17. Unqualified staff, whether employed by the Crown Prosecution Service or defence solicitors, should not be expected to provide any advocacy or legal services which they are not qualified to provide.
18. If a defendant attends at PTPH and is not represented, the judge will: -
 - a. First ensure that facilities can be made available for them to read the case materials and to view any relevant digital evidence. The CPS will assist in making such arrangements in cases where no defence solicitors have been instructed.
 - b. Then proceed to arraignment. The normal procedure will be followed, except that: -
 - i. A clear and succinct outline of the prosecution case will be provided orally to the court by the prosecution; and
 - ii. The judge will explain the regime for credit for guilty pleas by summarising the relevant guideline, and explaining how the guideline will be applied to the instant case. This must be done in a neutral way and it must be made clear that the decision as to plea is that of the defendant alone. They must be told that if they did not commit the

offence, they must not plead guilty and the case will be listed for trial. Indications as to sentence should not be given to unrepresented defendants and can only ever be given in accordance with the relevant legal principles.

- c. If the plea is guilty, the judge will: -
 - i. Establish whether there are any relevant factual disputes which might affect sentence.
 - ii. Consider whether to order a PSR.
 - iii. Ask the prosecutor for assistance by identifying the relevant range for sentencing, together with references to relevant guidelines. The prosecutor should confirm the effect of section 226 of the Sentencing Act 2020 (Custodial sentences: restrictions in certain cases where offender is not legally represented case: Archbold 5A-362; Blackstone D20.79) on the court's powers in the particular case.
- d. If the plea is not guilty, the judge will complete the PTPH form as far as possible and fix a date for trial.
- e. Where defendants appear from custody the court may seek assistance from the Bail Information Service at the relevant remand prison, if there is one, when considering whether bail can be granted pending either sentence or trial.

Custody Time Limits

- 19. Any application to the extend the CTL in any case where either or both the prosecution and defendant are unrepresented will be determined by the Resident Judge or his or her nominee. An unrepresented defendant must be advised by instructed solicitors and counsel of the relevant law and how they may make representations either in writing or orally. If the instructed lawyers cannot attend the hearing of the application, they should consider whether they should lodge submissions in writing.

Committals for sentence and sentence appeals from the magistrates' court

- 20. These cases will be listed for determination in the usual way. Where the court is informed in advance that one or more party will not be represented at the hearing, the case will remain listed and the judge will decide whether to proceed in the absence of one or more advocates who would otherwise have been present.

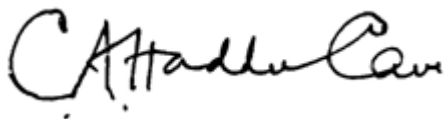
21. The court will consider the effect of section 226 of the Sentencing Act 2020 (Custodial sentences: restrictions in certain cases where offender is not legally represented case: Archbold 5A-362; Blackstone D20.79) on the court's powers in the particular in all cases when dealing with a committal for sentence where the defendant is not represented.

Trials

22. Where the court is informed in advance that one or more party will not be represented at a trial, the court will cause the case to be listed for a pre-trial review with the defendant to attend. The availability or otherwise of representation for all parties on the trial date will be investigated, and consideration will be given to moving the trial date to enable parties to be represented if representation is otherwise not available.

23. If a defendant wishes to be represented, it is likely to be an exceptional case where a judge orders a trial to proceed where the only reason why they are not represented is the CBA action.

Rt Hon. Lord Justice Haddon-Cave
Senior Presiding Judge



Rt Hon. Lord Justice Edis
Deputy Senior Presiding Judge



8th April 2022