CRIMINAL PRACTICE DIRECTIONS

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I General matters

CPD I General matters A

A.1 The Lord Chief Justice has power, including power under section 74 of the Courts Act 2003 and Part 1 of Schedule 2 of the Constitutional Reform Act 2005, to make directions as to the practice and procedure of the criminal courts. The following directions are made accordingly.

A.2 These Practice Directions replace the Consolidated Criminal Practice Direction of 8 July 2002 ([2002] 1 W.L.R. 2870; [2002] 2 Cr. App. R. 35), as amended, which is hereby revoked, with the exception of sections III.21, IV.31, IV.32, IV.33, IV.38 and IV.41.9. The Practice Directions, Practice Notes and Practice Statements listed in Annex A and Annex B of the 2002 consolidation, with the exception of Practice Direction: (Supreme Court) (Devolution Issues) [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486, are also revoked. Annexes D, E and F remain in force.

A.3 These Practice Directions, which shall be known as the Criminal Practice Directions, take effect from the 7th October 2013. They apply to all cases in all the criminal courts of England and Wales from that date.

Part 1 The overriding objective

CPD I General matters 1A

1A.1 The presumption of innocence and an adversarial process are essential features of English and Welsh legal tradition and of the defendant's right to a fair trial. But it is no part of a fair trial that questions of guilt and innocence should be determined by procedural manoeuvres. On the contrary, fairness is best served when the issues between the parties are identified as early and as clearly as possible. As Lord Justice Auld noted, a criminal trial is not a game under which a guilty defendant should be provided with a sporting chance. It is a search for truth in accordance with the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculpate himself, the object being to convict the guilty and acquit the innocent.

1A.2 Further, it is not just for a party to obstruct or delay the preparation of a case for trial in order to secure some perceived procedural advantage, or to take unfair advantage of a mistake by someone else. If courts allow that to happen it damages public confidence in criminal justice. The Rules and the Practice Direction, taken together, make it clear that courts must not allow it to happen.

Part 2 Understanding and applying the Rules

Part 3 Case management

CPD I General matters 3A: CASE MANAGEMENT

3A.1 To avoid unnecessary and wasted hearings, the parties should be allowed adequate time to prepare, having regard to the time limits for applications and notices set by the Criminal Procedure Rules and by other legislation. When those time limits have expired, the parties will be expected to be fully prepared.

3A.2 The required forms and guidance notes can all be found in Annex D. PDF and Word versions are available on the Criminal Procedure Rules pages of the Ministry of Justice website. The forms to be used in magistrates' courts contain directions some of which are determined by Criminal Procedure Rules or other legislation and some of which are discretionary, as explained in the guidance notes. All those directions apply in every case unless the court otherwise orders.

Cases to be tried in a magistrates' court or a youth court

3A.3 The trial preparation form authorised for use must be used. The form, read with the notes, constitutes a timetable for the effective preparation of a case and provides a list of all the matters that the court should consider in giving directions for trial.

Cases sent for trial in the Crown Court

3A.4 The magistrates' court that sends a case for trial should remind the parties of the time limits set by the Criminal Procedure Rules and other legislation applicable, in the standard form produced for the court by Her Majesty's Courts and Tribunals Service.

3A.5 In the magistrates' court's discretion, having consulted the Crown Court, it may give other directions for the preparation of the case: see rule 3.5(3) of the Criminal Procedure Rules. In particular, the magistrates' court may give directions for the case to be listed in the Crown Court for an early guilty plea hearing, a preliminary hearing or a plea and case management hearing, as appropriate.

Early guilty plea hearing

3A.6 The magistrates' court or the Crown Court may order an early guilty plea hearing, in accordance with directions given by the presiding judges, where a guilty plea is anticipated, to allow the Crown Court promptly to deal with such a case.

3A.7 Sentence should normally be passed at an early guilty plea hearing. The parties must prepare accordingly in advance of the hearing. This may include:

i) addressing any issue arising from a basis of plea,
ii) making timely application for a pre-sentence report and, if granted, ensuring that the Probation Service is provided with details of the offence(s) in respect of which the defendant intends to plead guilty, the details of any basis of plea(s) and of the defendant's current address and telephone number(s),
iii) obtaining medical or other material necessary for sentencing, and
iv) quantifying costs.

3A.8 The court must be notified promptly of any difficulty which may mean that sentence cannot be passed at the hearing so that an alternative date can be considered.

Preliminary hearings for cases sent for trial

3A.9 If no early guilty plea hearing is ordered, the magistrates' court or the Crown Court should order a preliminary hearing where:

(a) there are case management issues which call for such a hearing;

(b) the trial is likely to last for more than 4 weeks;

(c) it would be desirable to set an early trial date; or

(d) the defendant is a child or young person.

If there is to be a preliminary hearing, it is preferable for this to be held between 14 and 21 days after the case is sent for trial.

Plea and case management hearings ('PCMH')

3A.10 Where the magistrates' court does not order an early guilty plea hearing or a preliminary hearing, it should order a plea and case management hearing to be held within about:

(a) 13 weeks after sending for trial, where a defendant is in custody; or

(b) 16 weeks after sending for trial, where a defendant is on bail.

3A.11 Those periods accommodate the periods fixed by the relevant rules and other legislation for the service of:

(a) the prosecution case papers (see rule 9.15 of the Criminal Procedure Rules, and the regulations to which that rule refers);

(b) prosecution initial disclosure (see rule 22.2 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(c) the indictment (see rule 14.1 of the Criminal Procedure Rules);

(d) the defence statement and witness notice (see rule 22.4 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(e) any defence application to dismiss the charges (see rule 9.16 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(f) any defence application for prosecution disclosure (see rule 22.5 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(g) any defence application under Part 36 of the Criminal Procedure Rules (evidence of a complainant's previous sexual behaviour); and

(h) the prosecution response to any such application.

3A.12 Where the parties realistically expect to have completed these preparatory steps in less time than that then the magistrates' court should order the PCMH to be held earlier. But it will not normally be appropriate to order that the PCMH be held on a date before the expiry of at least 4 weeks from the date on which the prosecutor expects to serve the prosecution case papers, to allow the defence a proper opportunity to consider them and give a defence statement. To order that a PCMH be held before the parties have had a reasonable opportunity to complete their preparation in accordance with the Criminal Procedure Rules risks compromising the effectiveness of this most important pre-trial hearing and risks wasting their time and that of the court.

3A.13 Active case management at the PCMH is essential, to reduce the number of ineffective, cracked and vacated trials and delays during the trial to resolve legal issues. The effectiveness of a PCMH hearing in a contested case depends in large measure upon preparation by all concerned and upon the presence of the trial advocate, or an advocate who is able to make decisions and give the court the assistance which the trial advocate could be expected to give. Resident Judges, in setting the listing policy, should ensure that list officers fix cases as far as possible to enable the trial advocate to conduct the PCMH and the trial.

3A.14 The PCMH form authorised for use provides a list of all the matters that the court should consider in giving directions for trial.

3A.15 Additional pre-trial hearings should be held only if needed for some compelling reason. Such hearings – often described informally as 'mentions' – are expensive and should actively be discouraged. Where necessary the power to give, vary or

revoke a direction without a hearing should be used. Rule 3.9(3) of the Criminal Procedure Rules enables the court to require the parties' case progression officers to inform the Crown Court case progression officer that the case is ready for trial, that it will proceed as a trial on the date fixed and will take no more or less time than that previously ordered.

CPD I General matters 3B: PAGINATION AND INDEXING OF SERVED EVIDENCE

3B.1 The following directions apply to matters before the Crown Court, where

(a) there is an application to prefer a bill of indictment in relation to the case;

(b) a person is sent for trial under section 51 of the Crime and Disorder Act 1998 (sending cases to the Crown Court), to the service of copies of the documents containing the evidence on which the charge or charges are based under Paragraph 1 of Schedule 3 to that Act; or

(c) a defendant wishes to serve evidence.

3B.2 A party who serves documentary evidence in the Crown Court should:

(a) paginate each page in any bundle of statements and exhibits sequentially;

(b) provide an index to each bundle of statements produced including the following information:

i. the name of the case;

ii. the author of each statement;

iii. the start page number of the witness statement;

iv. the end page number of the witness statement.

(c) provide an index to each bundle of documentary and pictorial exhibits produced, including the following information:

i. the name of the case

ii. the exhibit reference;

iii. a short description of the exhibit;

iv. the start page number of the exhibit;

v. the end page number of the exhibit;

vi. where possible, the name of the person producing the exhibit should be added.

3B.3 Where additional documentary evidence is served, a party should paginate following on from the last page of the previous bundle or in a logical and sequential manner. A party should also provide notification of service of any amended index.

3B.4 The prosecution must ensure that the running total of the pages of prosecution evidence is easily identifiable on the most recent served bundle of prosecution evidence.

3B.5 For the purposes of these directions, the number of pages of prosecution evidence served on the court includes all

(a) witness statements;

(b) documentary and pictorial exhibits;

(c) records of interviews with the defendant; and

(d) records of interviews with other defendants which form part of the served prosecution documents or which are included in any notice of additional evidence,

but does not include any document provided on CD-ROM or by other means of electronic communication.

CPD I General matters 3C: ABUSE OF PROCESS STAY APPLICATIONS

3C.1 In all cases where a defendant in the Crown Court proposes to make an application to stay an indictment on the grounds of abuse of process, written notice of such application must be given to the prosecuting authority and to any co-defendant as soon as practicable after the defendant becomes aware of the grounds for doing so and not later than 14 days before the date fixed or warned for trial ("the relevant date"). Such notice must:

(a) give the name of the case and the indictment number;

(b) state the fixed date or the warned date as appropriate;

(c) specify the nature of the application;

(d) set out in numbered sub-paragraphs the grounds upon which the application is to be made;

(e) be copied to the chief listing officer at the court centre where the case is due to be heard.

3C.2 Any co-defendant who wishes to make a like application must give a like notice not later than seven days before the relevant date, setting out any additional grounds relied upon.

3C.3 In relation to such applications, the following automatic directions shall apply:

(a) the advocate for the applicant(s) must lodge with the court and serve on all other parties a skeleton argument in support of the application, at least five clear working days before the relevant date. If reference is to be made to any document not in the existing trial documents, a paginated and indexed bundle of such documents is to be provided with the skeleton argument;

(b) the advocate for the prosecution must lodge with the court and serve on all other parties a responsive skeleton argument at least two clear working days before the relevant date, together with a supplementary bundle if appropriate.

3C.4 All skeleton arguments must specify any propositions of law to be advanced (together with the authorities relied upon in support, with paragraph references to passages relied upon) and, where appropriate, include a chronology of events and a list of dramatis personae. In all instances where reference is made to a document, the reference in the trial documents or supplementary bundle is to be given.

3C.5 The above time limits are minimum time limits. In appropriate cases, the court will order longer lead times. To this end, in all cases where defence advocates are, at the time of the preliminary hearing or as soon as practicable after the case has been sent, considering the possibility of an abuse of process application, this must be raised with the judge dealing with the matter, who will

order a different timetable if appropriate, and may wish, in any event, to give additional directions about the conduct of the application. If the trial judge has not been identified, the matter should be raised with the Resident Judge.

CPD I General matters 3D: VULNERABLE PEOPLE IN THE COURTS

3D.1 In respect of eligibility for special measures, 'vulnerable' and 'intimidated' witnesses are defined in sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009); 'vulnerable' includes those under 18 years of age and people with a mental disorder or learning disability; a physical disorder or disability; or who are likely to suffer fear or distress in giving evidence because of their own circumstances or those relating to the case.

3D.2 However, many other people giving evidence in a criminal case, whether as a witness or defendant, may require assistance: the court is required to take 'every reasonable step' to encourage and facilitate the attendance of witnesses and to facilitate the participation of any person, including the defendant (Rule 3.8(4)(a) and (b)). This includes enabling a witness or defendant to give their best evidence, and enabling a defendant to comprehend the proceedings and engage fully with his or her defence. The pre-trial and trial process should, so far as necessary, be adapted to meet those ends. Regard should be had to the welfare of a young defendant as required by section 44 of the Children and Young Persons Act 1933, and generally to Parts 1 and 3 of the Criminal Procedure Rules (the overriding objective and the court's powers of case management).

3D.3 Under Part 3 of the Rules, the court must identify the needs of witnesses at an early stage (Rule 3.2(2)(b)) and may require the parties to identify arrangements to facilitate the giving of evidence and participation in the trial (Rule 3.10(c)(iv) and (v)). There are various statutory special measures that the court may utilise to assist a witness in giving evidence. Part 29 of the Rules gives the procedures to be followed. Courts should note the 'primary rule' which requires the court to give a direction for a special measure to assist a child witness or qualifying witness and that in such cases an application to the court is not required (rule 29.9).

3D.4 Court of Appeal decisions on this subject include a judgment from the Lord Chief Justice, Lord Judge in *R v Cox* [2012] EWCA Crim 549, [2012] 2 Cr. App. R. 6; *R v Wills* [2011] EWCA Crim 1938, [2012] 1 Cr. App. R. 2; and *R v E* [2011] EWCA Crim 3028, [2012] Crim L.R. 563.

3D.5 In *R v Wills*, the Court endorsed the approach taken by the report of the Advocacy Training Council (ATC) 'Raising the Bar: the Handling of Vulnerable Witnesses, Victims and Defendants in Court' (2011). The report includes and recommends the use of 'toolkits' to assist advocates as they prepare to question vulnerable people at court: http://www.advocacytrainingcouncil.org/vulnerable-witnesses/raising-the-bar

3D.6 Further toolkits are available through the Advocate's Gateway which is managed by the ATC's Management Committee: http://www.theadvocatesgateway.org/

3D.7 These toolkits represent best practice. Advocates should consult and follow the relevant guidance whenever they prepare to question a young or otherwise vulnerable witness or defendant. Judges may find it helpful to refer advocates to this material and to use the toolkits in case management.

3D.8 'Achieving Best Evidence in Criminal Proceedings' (Ministry of Justice 2011) describes best practice in preparation for the investigative interview and trial: http://www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf

CPD I General matters 3E: GROUND RULES HEARINGS TO PLAN THE QUESTIONING OF A VULNERABLE WITNESS OR DEFENDANT

3E.1 The judiciary is responsible for controlling questioning. Over-rigorous or repetitive cross-examination of a child or vulnerable witness should be stopped. Intervention by the judge, magistrates or intermediary (if any) is minimised if questioning, taking account of the individual's communication needs, is discussed in advance and ground rules are agreed and adhered to.

3E.2 Discussion of ground rules is required in all intermediary trials where they must be discussed between the judge or magistrates, advocates and intermediary before the witness gives evidence. The intermediary must be present but is not required to take the oath (the intermediary's declaration is made just before the witness gives evidence).

3E.3 Discussion of ground rules is good practice, even if no intermediary is used, in all young witness cases and in other cases where a witness or defendant has communication needs. Discussion before the day of trial is preferable to give advocates time to adapt their questions to the witness's needs. It may be helpful for a trial practice note of boundaries to be created at the end of the discussion. The judge may use such a document in ensuring that the agreed ground rules are complied with.

3E.4 All witnesses, including the defendant and defence witnesses, should be enabled to give the best evidence they can. In relation to young and/or vulnerable people, this may mean departing radically from traditional cross-examination. The form and extent of appropriate cross-examination will vary from case to case. For adult non vulnerable witnesses an advocate will usually put his case so that the witness will have the opportunity of commenting upon it and/or answering it. When the witness is young or otherwise vulnerable, the court may dispense with the normal practice and impose restrictions on the advocate 'putting his case' where there is a risk of a young or otherwise vulnerable witness failing to understand, becoming distressed or acquiescing to leading questions. Where limitations on questioning are necessary and appropriate, they must be clearly defined. The judge has a duty to ensure that they are complied with and should explain them to the jury and the reasons for them. If the advocate fails to comply with the limitations, the judge should give relevant directions to the jury when that occurs and prevent further questioning that does not comply with the ground rules settled upon in advance. Instead of commenting on inconsistencies during cross-examination, following discussion between the judge and the advocates, the advocate or judge may point

out important inconsistencies after (instead of during) the witness's evidence. The judge should also remind the jury of these during summing up. The judge should be alert to alleged inconsistencies that are not in fact inconsistent, or are trivial.

3E.5 If there is more than one defendant, the judge should not permit each advocate to repeat the questioning of a vulnerable witness. In advance of the trial, the advocates should divide the topics between them, with the advocate for the first defendant leading the questioning, and the advocate(s) for the other defendant(s) asking only ancillary questions relevant to their client's case, without repeating the questioning that has already taken place on behalf of the other defendant(s).

3E.6 In particular in a trial of a sexual offence, 'body maps' should be provided for the witness' use. If the witness needs to indicate a part of the body, the advocate should ask the witness to point to the relevant part on the body map. In sex cases, judges should not permit advocates to ask the witness to point to a part of the witness' own body. Similarly, photographs of the witness' body should not be shown around the court while the witness is giving evidence.

CPD I General matters 3F: INTERMEDIARIES

3F.1 Intermediaries are communication specialists (not supporters or expert witnesses) whose role is to facilitate communication between the witness and the court, including the advocates. Intermediaries are independent of the parties and owe their duty to the court (see Registered Intermediaries Procedural Guidance Manual, Ministry of Justice, 2012): http://www.cps.gov.uk/publications/docs/RI_ProceduralGuidanceManual_2012.pdf

3F.2 Intermediaries for witnesses, with the exception of defendants, are one of the special measures available under the Youth Justice and Criminal Evidence Act 1999 and Part 29 of the Criminal Procedure Rules.

3F.3 There is currently no statutory provision in force for intermediaries for defendants. Section 104 of the Coroners and Justice Act 2009 (not yet implemented) creates a new section 33BA of the Youth Justice and Criminal Evidence Act 1999. This will provide an intermediary to an eligible defendant only while giving evidence. A court may use its inherent powers to appoint an intermediary to assist the defendant's communication at trial (either solely when giving evidence or throughout the trial) and, where necessary, in preparation for trial: *R (AS) v Great Yarmouth Youth Court* [2011] EWHC 2059 (Admin), [2012] Crim L.R. 478; *R v H* [2003] EWCA Crim 1208, Times, April 15, 2003; *R (C) v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin), [2010] 1 All E.R. 735; *R (D) v Camberwell Green Youth Court*, [2005] UKHL 4, [2005] 1 W.L.R. 393, [2005] 2 Cr. App. R. 1; *R (TP) v West London Youth Court* [2005] EWHC 2583 (Admin), [2006] 1 W.L.R. 1219, [2006] 1 Cr. App. R. 25.

3F.4 Ministry of Justice regulation only applies to Registered Intermediaries appointed for prosecution and defence witnesses through its Witness Intermediary Scheme. All defendant intermediaries – professionally qualified or otherwise – are 'non-registered' in this context, even though they may be a Registered Intermediary in respect of witnesses. Even where a judge concludes he has a common law power to

direct the provision of an intermediary, the direction will be ineffective if no intermediary can be identified for whom funding would be available.

3F.5 Assessment should be considered if a child or young person under 18 seems unlikely to be able to recognise a problematic question or, even if able to do so, may be reluctant to say so to a questioner in a position of authority. Studies suggest that the majority of young witnesses, across all age groups, fall into one or other of these categories. For children aged 11 years and under in particular, there should be a presumption that an intermediary assessment is appropriate. Once the child's individual requirements are known and discussed at the ground rules hearing, the intermediary may agree that his or her presence is not needed for the trial.

3F.6 In the absence of an intermediary for the defendant, trials should not be stayed where an asserted unfairness can be met by the trial judge adapting the trial process with appropriate and necessary caution (*R v Cox* [2012] EWCA Crim 549, [2012] 2 Cr. App. R. 6). This includes setting ground rules for all witness testimony to help the defendant follow proceedings; for example, directing that all witness evidence be adduced by simple questions, with witnesses asked to answer in short sentences; and short periods of evidence, followed by breaks to enable the defendant to relax and for counsel to summarise the evidence for him and to take further instructions.

Photographs of court facilities

3F.7 Resident Judges in the Crown Court or the Chief Clerk or other responsible person in the magistrates' courts should, in consultation with HMCTS managers responsible for court security matters, develop a policy to govern under what circumstances photographs or other visual recordings may be made of court facilities, such as a live link room, to assist vulnerable or child witnesses to familiarise themselves with the setting, so as to be enabled to give their best evidence. For example, a photograph may provide a helpful reminder to a witness whose court visit has taken place sometime earlier. Resident Judges should tend to permit photographs to be taken for this purpose by intermediaries or supporters, subject to whatever restrictions the Resident Judge or responsible person considers to be appropriate, having regard to the security requirements of the court.

CPD I General matters 3G: VULNERABLE DEFENDANTS

Before the trial, sentencing or appeal

3G.1 If a vulnerable defendant, especially one who is young, is to be tried jointly with one who is not, the court should consider at the plea and case management hearing, or at a case management hearing in a magistrates' court, whether the vulnerable defendant should be tried on his own, but should only so order if satisfied that a fair trial cannot be achieved by use of appropriate special measures or other support for the defendant. If a vulnerable defendant is tried jointly with one who is not, the court should consider whether any of the modifications set out in this direction should apply in the circumstances of the joint trial and, so far as practicable, make orders to give effect to any such modifications.

3G.2 It may be appropriate to arrange that a vulnerable defendant should visit, out of court hours and before the trial, sentencing or appeal hearing, the courtroom in which that hearing is to take place so that he or she can familiarise him or herself with it.

3G.3 Where an intermediary is being used to help the defendant to communicate at court, the intermediary should accompany the defendant on his or her pre-trial visit. The visit will enable the defendant to familiarise him or herself with the layout of the court, and may include matters such as: where the defendant will sit, either in the dock or otherwise; court officials (what their roles are and where they sit); who else might be in the court, for example those in the public gallery and press box; the location of the witness box; basic court procedure; and the facilities available in the court.

3G.4 If the defendant's use of the live link is being considered, he or she should have an opportunity to have a practice session.

3G.5 If any case against a vulnerable defendant has attracted or may attract widespread public or media interest, the assistance of the police should be enlisted to try and ensure that the defendant is not, when attending the court, exposed to intimidation, vilification or abuse. Section 41 of the Criminal Justice Act 1925 prohibits the taking of photographs of defendants and witnesses (among others) in the court building or in its precincts, or when entering or leaving those precincts. A direction reminding media representatives of the prohibition may be appropriate. The court should also be ready at this stage, if it has not already done so, where relevant to make a reporting restriction under section 39 of the Children and Young Persons Act 1933 or, on an appeal to the Crown Court from a youth court, to remind media representatives of the application of section 49 of that Act.

3G.6 The provisions of the Practice Direction accompanying Part 16 should be followed.

The trial, sentencing or appeal hearing

3G.7 Subject to the need for appropriate security arrangements, the proceedings should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level.

3G.8 Subject again to the need for appropriate security arrangements, a vulnerable defendant, especially if he is young, should normally, if he wishes, be free to sit with members of his family or others in a like relationship, and with some other suitable supporting adult such as a social worker, and in a place which permits easy, informal communication with his legal representatives. The court should ensure that a suitable supporting adult is available throughout the course of the proceedings.

3G.9 It is essential that at the beginning of the proceedings, the court should ensure that what is to take place has been explained to a vulnerable defendant in terms he or she can understand and, at trial in the Crown Court, it should ensure in particular that the role of the jury has been explained. It should remind those representing the vulnerable defendant and the supporting adult of their responsibility to explain

each step as it takes place and, at trial, explain the possible consequences of a guilty verdict and credit for a guilty plea. The court should also remind any intermediary of the responsibility to ensure that the vulnerable defendant has understood the explanations given to him/her. Throughout the trial the court should continue to ensure, by any appropriate means, that the defendant understands what is happening and what has been said by those on the bench, the advocates and witnesses.

3G.10 A trial should be conducted according to a timetable which takes full account of a vulnerable defendant's ability to concentrate. Frequent and regular breaks will often be appropriate. The court should ensure, so far as practicable, that the whole trial is conducted in clear language that the defendant can understand and that evidence in chief and cross-examination are conducted using questions that are short and clear. The conclusions of the 'ground rules' hearing should be followed, and advocates should use and follow the 'toolkits' as discussed above.

3G.11 A vulnerable defendant who wishes to give evidence by live link, in accordance with section 33A of the Youth Justice and Criminal Evidence Act 1999, may apply for a direction to that effect; the procedure in Section 4 of Part 29 of the Rules should be followed. Before making such a direction, the court must be satisfied that it is in the interests of justice to do so and that the use of a live link would enable the defendant to participate more effectively as a witness in the proceedings. The direction will need to deal with the practical arrangements to be made, including the identity of the person or persons who will accompany him or her.

3G.12 In the Crown Court, the judge should consider whether robes and wigs should be worn, and should take account of the wishes of both a vulnerable defendant and any vulnerable witness. It is generally desirable that those responsible for the security of a vulnerable defendant who is in custody, especially if he or she is young, should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason.

3G.13 The court should be prepared to restrict attendance by members of the public in the courtroom to a small number, perhaps limited to those with an immediate and direct interest in the outcome. The court should rule on any challenged claim to attend. However, facilities for reporting the proceedings (subject to any restrictions under section 39 or 49 of the Children and Young Persons Act 1933) must be provided. The court may restrict the number of reporters attending in the courtroom to such number as is judged practicable and desirable. In ruling on any challenged claim to attend in the courtroom for the purpose of reporting, the court should be mindful of the public's general right to be informed about the administration of justice.

3G.14 Where it has been decided to limit access to the courtroom, whether by reporters or generally, arrangements should be made for the proceedings to be relayed, audibly and if possible visually, to another room in the same court complex to which the media and the public have access if it appears that there will be a need for such additional facilities. Those making use of such a facility should be

reminded that it is to be treated as an extension of the courtroom and that they are required to conduct themselves accordingly.

CPD I General matters 3H: WALES AND THE WELSH LANGUAGE: DEVOLUTION ISSUES

3H.1 These are the subject of Practice Direction: (Supreme Court) (Devolution Issues) [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486, to which reference should be made.

CPD I General matters 3J: WALES AND THE WELSH LANGUAGE: APPLICATIONS FOR EVIDENCE TO BE GIVEN IN WELSH

3J.1 If a defendant in a court in England asks to give or call evidence in the Welsh language, the case should not be transferred to Wales. In ordinary circumstances, interpreters can be provided on request.

CPD I General matters 3K: WALES AND THE WELSH LANGUAGE: USE OF THE WELSH LANGUAGE IN COURTS IN WALES

3K.1 The purpose of this direction is to reflect the principle of the Welsh Language Act 1993 that, in the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality.

General

3K.2 It is the responsibility of the legal representatives in every case in which the Welsh language may be used by any witness or party, or in any document which may be placed before the court, to inform the court of that fact, so that appropriate arrangements can be made for the listing of the case.

3K.3 Any party or witness is entitled to use Welsh in a magistrates' court in Wales without giving prior notice. Arrangements will be made for hearing such cases in accordance with the 'Magistrates' Courts' Protocol for Listing Cases where the Welsh Language is used' (January 2008) which is available on the Judiciary's website: http://www.judiciary.gov.uk/NR/exeres/57AD4763-F265-47B9-8A35-0442E08160E6. See also rule 37.13.

3K.4 If the possible use of the Welsh language is known at the time of sending or appeal to the Crown Court, the court should be informed immediately after sending or when the notice of appeal is lodged. Otherwise, the court should be informed as soon as the possible use of the Welsh language becomes known.

3K.5 If costs are incurred as a result of failure to comply with these directions, a wasted costs order may be made against the defaulting party and / or his legal representatives.

3K.6 The law does not permit the selection of jurors in a manner which enables the court to discover whether a juror does or does not speak Welsh, or to secure a jury whose members are bilingual, to try a case in which the Welsh language may be used.

Preliminary and plea and case management hearings

3K.7 An advocate in a case in which the Welsh language may be used must raise that matter at the preliminary and/or the plea and case management hearing and endorse details of it on the advocates' questionnaire, so that appropriate directions may be given for the progress of the case.

Listing

3K.8 The listing officer, in consultation with the resident judge, should ensure that a case in which the Welsh language may be used is listed

(a) wherever practicable before a Welsh speaking judge, and

(b) in a court in Wales with simultaneous translation facilities.

Interpreters

3K.9 Whenever an interpreter is needed to translate evidence from English into Welsh or from Welsh into English, the court listing officer in whose court the case is to be heard shall contact the Welsh Language Unit who will ensure the attendance of an accredited interpreter.

Jurors

3K.10 The jury bailiff, when addressing the jurors at the start of their period of jury service, shall inform them that each juror may take an oath or affirm in Welsh or English as he wishes.

3K.11 After the jury has been selected to try a case, and before it is sworn, the court officer swearing in the jury shall inform the jurors in open court that each juror may take an oath or affirm in Welsh or English as he wishes. A juror who takes the oath or affirms in Welsh should not be asked to repeat it in English.

3K.12 Where Welsh is used by any party or witness in a trial, an accredited interpreter will provide simultaneous translation from Welsh to English for the jurors who do not speak Welsh. There is no provision for the translation of evidence from English to Welsh for a Welsh speaking juror.

3K.13 The jury's deliberations must be conducted in private with no other person present and therefore no interpreter may be provided to translate the discussion for the benefit of one or more of the jurors.

Witnesses

3K.14 When each witness is called, the court officer administering the oath or affirmation shall inform the witness that he may be sworn or affirm in Welsh or English, as he wishes. A witness who takes the oath or affirms in Welsh should not be asked to repeat it in English.

Opening / closing of Crown Courts

3K.15 Unless it is not reasonably practicable to do so, the opening and closing of the court should be performed in Welsh and English.

Role of Liaison Judge

3K.16 If any question or problem arises concerning the implementation of these directions, contact should in the first place be made with the Liaison Judge for the Welsh language through the Wales Circuit Office:

HMCTS WALES / GLITEM CYMRU
3rd Floor, Churchill House / 3ydd Llawr Tŷ Churchill
Churchill Way / Ffordd Churchill
Cardiff / Caerdydd
CF10 2HH
029 2067 8300

Part 4 Service of documents

Part 5 Forms and court records

CPD I General matters 5A: FORMS

5A.1 The forms at Annex D, or forms to that effect, are to be used in the criminal courts, in accordance with Rule 5.1.

5A.2 The forms at Annex E, the case management forms, must be used in the criminal courts, in accordance with Rule 3.11(1).

5A.3 The table at the beginning of each section lists the forms and:

(a) shows the Rule in connection with which each applies;

(b) describes each form.

5A.4 The forms may be amended or withdrawn from time to time, or new forms added, under the authority of the Lord Chief Justice.

CPD I General matters 5B: ACCESS TO INFORMATION HELD BY THE COURT

5B.1 Open justice, as Lord Justice Toulson recently re-iterated in the case of *R(Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618, is a 'principle at the heart of our system of justice and vital to the rule of law'. There are exceptions but these 'have to be justified by some even more important principle.' However, the practical application of that undisputed principle, and the proper balancing of conflicting rights and principles, call for careful judgments to be made. The following is intended to provide some assistance to courts making decisions when asked to provide the public, including journalists, with access to or copies of information and documents held by the

court. It is not a prescriptive list, as the court will have to consider all the circumstances of each individual case.

5B.2 It remains the responsibility of the recipient of information or documents to ensure that they comply with any and all restrictions such as reporting restrictions (see Part 16 and the accompanying Practice Direction).

5B.3 For the purposes of this direction, the word document includes images in photographic, digital including DVD format, video, CCTV or any other form.

5B.4 Certain information can and should be provided to the public on request, unless there are restrictions, such as reporting restrictions, imposed in that particular case. Rule 5.8(4) and 5.8(6) read together specify the information that the court officer will supply to the public; an oral application is acceptable and no reason need be given for the request. There is no requirement for the court officer to consider the non-disclosure provisions of the Data Protection Act 1998 as the exemption under section 35 applies to all disclosure made under 'any enactment … or by the order of a court', which includes under the Criminal Procedure Rules.

5B.5 If the information sought is not listed at Rule 5.8(6), Rule 5.8(7) will apply, and the provision of information is at the discretion of the court. The following guidance is intended to assist the court in exercising that discretion.

5B.6 A request for access to documents used in a criminal case should first be addressed to the party who presented them to the court. Prosecuting authorities are subject to the Freedom of Information Act 2000 and the Data Protection Act 1998 and their decisions are susceptible to review.

5B.7 If the request is from a journalist or media organisation, note that there is a protocol between ACPO, the CPS and the media entitled 'Publicity and the Criminal Justice System': http://www.cps.gov.uk/publications/agencies/mediaprotocol.html There is additionally a protocol made under Rule 5.8(5)(b) between the media and HMCTS: http://www.newspapersoc.org.uk/sites/default/files/Docs/Protocol-for-Sharing-Court-Registers-and-Court-Lists-with-Local-Newspapers_September-2011.doc
This Practice Direction does not affect the operation of those protocols. Material should generally be sought under the relevant protocol before an application is made to the court.

5B.8 An application to which Rule 5.8(7) applies must be made in accordance with Rule 5.8; it must be in writing, unless the court permits otherwise, and 'must explain for what purpose the information is required.' A clear, detailed application, specifying the name and contact details of the applicant, whether or not he or she represents a media organisation, and setting out the reasons for the application and to what use the information will be put, will be of most assistance to the court. Applicants should state if they have requested the information under a protocol and include any reasons given for the refusal. Before considering such an application, the court will expect the applicant to have given notice of the request to the parties.

5B.9 The court will consider each application on its own merits. The burden of justifying a request for access rests on the applicant. Considerations to be taken into account will include:

i. whether or not the request is for the purpose of contemporaneous reporting; a request after the conclusion of the proceedings will require careful scrutiny by the court;
ii. the nature of the information or documents being sought;
iii. the purpose for which they are required;
iv. the stage of the proceedings at the time when the application is made;
v. the value of the documents in advancing the open justice principle, including enabling the media to discharge its role, which has been described as a 'public watchdog', by reporting the proceedings effectively;
vi. any risk of harm which access to them may cause to the legitimate interests of others; and
vii. any reasons given by the parties for refusing to provide the material requested and any other representations received from the parties.

Further, all of the principles below are subject to any specific restrictions in the case. Courts should be aware that the risk of providing a document may reduce after a particular point in the proceedings, and when the material requested may be made available.

Documents read aloud in their entirety

5B.10 If a document has been read aloud to the court in its entirety, it should usually be provided on request, unless to do so would be disruptive to the court proceedings or place an undue burden on the court, the advocates or others. It may be appropriate and convenient for material to be provided electronically, if this can be done securely.

5B.11 Documents likely to fall into this category are:

i. Opening notes
ii. Statements agreed under section 9 of the Criminal Justice Act 1967, including experts' reports, if read in their entirety
iii. Admissions made under section 10 of the Criminal Justice Act 1967.

Documents treated as read aloud in their entirety

5B.12 A document treated by the court as if it had been read aloud in public, though in fact it has been neither read nor summarised aloud, should generally be made available on request. The burden on the court, the advocates or others in providing the material should be considered, but the presumption in favour of providing the material is greater when the material has only been treated as having been read aloud. Again, subject to security considerations, it may be convenient for the material to be provided electronically.

5B.13 Documents likely to fall into this category include:

i. Skeleton arguments
ii. Written submissions

Documents read aloud in part or summarised aloud

5B.14 Open justice requires only access to the part of the document that has been read aloud. If a member of the public requests a copy of such a document, the court should consider whether it is proportionate to order one of the parties to produce a suitably redacted version. If not, access to the document is unlikely to be granted; however open justice will generally have been satisfied by the document having been read out in court.

5B.15 If the request comes from an accredited member of the press (see *Access by reporters* below), there may be circumstances in which the court orders that a copy of the whole document be shown to the reporter, or provided, subject to the condition that those matters that had not been read out to the court may not be used or reported. A breach of such an order would be treated as a contempt of court.

5B.16 Documents in this category are likely to include:

i. Section 9 statements that are edited

Jury bundles and exhibits (including video footage shown to the jury)

5B.17 The court should consider:

i. whether access to the specific document is necessary to understand or effectively to report the case;
ii. the privacy of third parties, such as the victim (in some cases, the reporting restriction imposed by section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926 will apply (indecent or medical matter));
iii. whether the reporting of anything in the document may be prejudicial to a fair trial in this or another case, in which case whether it may be necessary to make an order under section 4(2) of the Contempt of Court Act 1981.

The court may order one of the parties to provide a copy of certain pages (or parts of the footage), but these should not be provided electronically.

Statements of witnesses who give oral evidence

5B.18 A witness statement does not become evidence unless it is agreed under section 9 of the Criminal Justice Act 1967 and presented to the court. Therefore the statements of witnesses who give oral evidence, including ABE interview and transcripts and experts' reports, should not usually be provided. Open justice is generally satisfied by public access to the court.

Confidential documents

5B.19 A document the content of which, though relied upon by the court, has not been communicated to the public or reporters, nor treated as if it had been, is likely to have been supplied in confidence and should be treated accordingly. This will apply even if the court has made reference to the document or quoted from the document. There is most unlikely to be a sufficient reason to displace the expectation of confidentiality ordinarily attaching to a document in this category, and it would be exceptional to permit the inspection or copying by a member of the public or of the media of such a document. The rights and legitimate interests of

others are likely to outweigh the interests of open justice with respect these documents.

5B.20 Documents in this category are likely to include:

i. Pre-sentence reports
ii. Medical reports
iii. Victim Personal Statements
iv. Reports and summaries for confiscation

Prohibitions against the provision of information

5B.21 Statutory provisions may impose specific prohibitions against the provision of information. Those most likely to be encountered are listed in the note to rule 5.8 and include the Rehabilitation of Offenders Act 1974, section 18 of the Criminal Procedure and Investigations Act 1996 ("unused material" disclosed by the prosecution), sections 33, 34 and 35 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO Act 2012') (privileged information furnished to the Legal Aid Agency) and reporting restrictions generally.

5B.22 Reports of allocation or sending proceedings are restricted by section 52A of the Crime and Disorder Act 1998, so that only limited information, as specified in the statute, may be reported, whether it is referred to in the courtroom or not. The magistrates' court has power to order that the restriction shall not apply; if any defendant objects the court must apply the interests of justice test as specified in section 52A. The restriction ceases to apply either after all defendants indicate a plea of guilty, or after the conclusion of the trial of the last defendant to be tried. If the case does not result in a guilty plea, a finding of guilt or an acquittal, the restriction does not lift automatically and an application must be made to the court.

5B.23 Extradition proceedings have some features in common with committal proceedings, but no automatic reporting restrictions apply.

5B.24 Public Interest Immunity and the rights of a defendant, witnesses and victims under Article 6 and 8 of the European Convention on Human Rights may also restrict the power to release material to third parties.

Other documents

5B.25 The following table indicates the considerations likely to arise on an application to inspect or copy other documents.

Document	Considerations
Charge sheet Indictment	The alleged offence(s) will have been read aloud in court, and their terms must be supplied under Rule 5.8(4)
Material disclosed under CPIA 1996	To the extent that the content is deployed at trial, it becomes public at that hearing. Otherwise, it is a criminal offence for it to be disclosed: section 18 of the 1996 Act.
Written notices, applications, replies (including any application for	To the extent that evidence is introduced, or measures taken, at trial, the content

representation)	becomes public at that hearing. A statutory prohibition against disclosure applies to an application for representation: sections 33, 34 and 35 of the LASPO Act 2012.
Sentencing remarks	Sentencing remarks should usually be provided to the accredited Press, if the judge was reading from a prepared script which was handed out immediately afterwards; if not, then permission for a member of the accredited Press to obtain a transcript should usually be given (see also paragraphs 26 and 29 below).
Official recordings	See Rule 5.5.
Transcript	See Rule 5.5.

Access by reporters

5B.26 Under Part 5 of the Rules, the same procedure applies for applications for access to information by reporters as to other members of the public. However, if the application is made by legal representatives instructed by the media, or by an accredited member of the media, who is able to produce in support of the application a valid Press Card (http://www.ukpresscardauthority.co.uk/) then there is a greater presumption in favour of providing the requested material, in recognition of the press' role as 'public watchdog' in a democratic society (*Observer and Guardian v United Kingdom* (1992) 14 E.H.R.R. 153, Times November 27, 1991). The general principle in those circumstances is that the court should supply documents and information unless there is a good reason not to in order to protect the rights or legitimate interests of others and the request will not place an undue burden on the court (*R(Guardian News and Media Ltd)* at [87]). Subject to that, the paragraphs above relating to types of documents should be followed.

5B.27 Court staff should usually verify the authenticity of cards, checking the expiry date on the card and where necessary may consider telephoning the number on the reverse of the card to verify the card holder. Court staff may additionally request sight of other identification if necessary to ensure that the card holder has been correctly identified. The supply of information under Rule 5.8(7) is at the discretion of the court, and court staff must ensure that they have received a clear direction from the court before providing any information or material under Rule 5.8(7) to a member of the public, including to the accredited media or their legal representatives.

5B.28 Opening notes and skeleton arguments or written submissions, once they have been placed before the court, should usually be provided to the media. If there is no opening note, permission for the media to obtain a transcript of the prosecution opening should usually be given (see below). It may be convenient for copies to be provided electronically by counsel, provided that the documents are kept suitably secure. The media are expected to be aware of the limitations on the use to which such material can be put, for example that legal argument held in the absence of the jury must not be reported before the conclusion of the trial.

5B.29 The media should also be able to obtain transcripts of hearings held in open court directly from the transcription service provider, on payment of any required fee. The service providers commonly require the judge's authorisation before they will provide a transcript, as an additional verification to ensure that the correct material is released and reporting restrictions are noted. However, responsibility for compliance with any restriction always rests with the person receiving the information or material: see CPD II Preliminary proceedings 16B.

5B.30 It is not for the judge to exercise an editorial judgment about 'the adequacy of the material already available to the paper for its journalistic purpose' (*Guardian* at 82) but the responsibility for complying with the Contempt of Court Act 1981 and any and all restrictions on the use of the material rests with the recipient.

II Preliminary proceedings

Part 6 Investigation orders and warrants

CPD II Preliminary proceedings 6A: INVESTIGATION ORDERS AND WARRANTS

6A.1 Powers of entry, search and seizure, and powers to obtain banking and other confidential information, are among the most intrusive that investigators can exercise. Every application must be carefully scrutinised with close attention paid to what the relevant statutory provision requires of the applicant and to what it permits. Part 6 of the Rules must be followed, and the accompanying forms must be used. These are designed to prompt applicants, and the courts, to deal with all of the relevant criteria.

6A.2 The issuing of a warrant or the making of such an order is never to be treated as a formality and it is therefore essential that the judge or magistrate considering the application is given, and must take, sufficient time for the purpose. The prescribed forms require the applicant to provide a time estimate, and listing officers and justices' legal advisers should take account of these.

6A.3 Applicants for orders and warrants owe the court duties of candour and truthfulness. On any application made without notice to the respondent, and so on all applications for search warrants, the duty of frank and complete disclosure is especially onerous. The applicant must draw the court's attention to any information that is unfavourable to the application. The existence of unfavourable information will not necessarily lead to the application being refused; it will be a matter for the court what weight to place on each piece of information.

6A.4 Where an applicant supplements an application with additional oral or written information, on questioning by the court or otherwise, it is essential that the court keeps an adequate record. What is needed will depend upon the circumstances. The Rules require that a record of the 'gist' be retained. The purpose of such a record is to allow the sufficiency of the court's reasons for its decision subsequently to be assessed. The gravity of such decisions requires that their exercise should be susceptible to scrutiny and to explanation by reference to all of the information that was taken into account.

6A.5 The forms that accompany Part 6 of the Rules provide for the most frequently encountered applications. However, there are some hundreds of powers of entry, search and seizure, supplied by a corresponding number of legislative provisions. In any criminal matter, if there is no form designed for the particular warrant or order sought, the forms should still be used, as far as is practicable, and adapted as necessary. The applicant should pay particular attention to the specific legislative requirements for the granting of such an application to ensure that the court has all of the necessary information, and, if the court might be unfamiliar with the legislation, should provide a copy of the relevant provisions. Applicants must comply with the duties of candour and truthfulness, and include in their application the declarations required by the Rules and must make disclosure of any unfavourable information to the court.

Part 7 Starting a prosecution in a magistrates' court

Part 8 Discontinuing a prosecution

Part 9 Allocation and sending for trial

CPD II Preliminary proceedings 9A: ALLOCATION (MODE OF TRIAL)

9A.1 Courts must follow the Sentencing Council's guideline on Allocation (mode of trial) when deciding whether or not to send defendants charged with "either way" offences for trial in the Crown Court under section 51(1) of the Crime and Disorder Act 1998. The guideline refers to the factors to which a court must have regard in accordance with section 19 of the Magistrates' Courts Act 1980. Section 19(2)(a) permits reference to previous convictions of the defendant.

9A.2 The Allocation guideline lists four factors, a) to d), that the court must also have regard to. No examples or guidance are given, however, the following could be a consideration when applying the factors: that where cases involve complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, the court should consider sending for trial.

9A.3 Certain general observations can also be made:

(a) the court should never make its decision on the grounds of convenience or expedition; and

(b) the fact that the offences are alleged to be specimens is a relevant consideration (although it has to be borne in mind that difficulties can arise in sentencing in relation to specimen counts: see *R v Clark* [1996] 2 Cr. App. R. 282, [1996] 2 Cr. App. R. (S.) 351; *R v Canavan and others* [1998] 1 W.L.R. 604, [1998] 1 Cr. App. R. 79, [1998] 1 Cr. App. R. (S.) 243 and *R v Oakes* [2012] EWCA Crim 2435, [2013] 2 Cr. App. R. (S.) 22 (see case of *R v Restivo*)); the fact that the defendant

will be asking for other offences to be taken into consideration, if convicted, is not.

Part 10 Initial details of the prosecution case

CPD II Preliminary proceedings 10A: DEFENDANT'S RECORD

Copies of record

10A.1 The defendant's record (previous convictions, cautions, reprimands, etc) may be taken into account when the court decides not only on sentence but also, for example, about bail, or when allocating a case for trial. It is therefore important that up to date and accurate information is available. Previous convictions must be provided as part of the initial details of the prosecution case under Part 10 of the Rules.

10A.2 The record should usually be provided in the following format:

Personal details and summary of convictions and cautions – Police National Computer ["PNC"] Court / Defence / Probation Summary Sheet;
Previous convictions – PNC Court / Defence / Probation printout, supplemented by Form MG16 if the police force holds convictions not shown on PNC;
Recorded cautions – PNC Court / Defence / Probation printout, supplemented by Form MG17 if the police force holds cautions not shown on PNC.

10A.3 The defence representative should take instructions on the defendant's record and if the defence wish to raise any objection to the record, this should be made known to the prosecutor immediately.

10A.4 It is the responsibility of the prosecutor to ensure that a copy of the defendant's record has been provided to the Probation Service.

10A.5 Where following conviction a custodial order is made, the court must ensure that a copy is attached to the order sent to the prison.

Additional information

10A.6 In the Crown Court, the police should also provide brief details of the circumstances of the last three similar convictions and / or of convictions likely to be of interest to the court, the latter being judged on a case-by-case basis.

10A.7 Where the current alleged offence could constitute a breach of an existing sentence such as a suspended sentence, community order or conditional discharge, and it is known that that sentence is still in force then details of the circumstances of the offence leading to the sentence should be included in the antecedents. The detail should be brief and include the date of the offence.

10A.8 On occasions the PNC printout provided may not be fully up to date. It is the responsibility of the prosecutor to ensure that all of the necessary information is available to the court and the Probation Service and provided to the defence. Oral

updates at the hearing will sometimes be necessary, but it is preferable if this information is available in advance.

Part 11 – [Empty]

Part 12 - [Empty]

Part 13 – [Empty]

Part 14 The indictment

CPD II Preliminary proceedings 14A: SETTLING THE INDICTMENT

14A.1 Rule 14.1 of the Criminal Procedure Rules requires the prosecutor to serve a draft indictment not more than 28 days after service of the evidence in a case sent for trial, after the sending of the defendant for trial, or after one of the other events listed in that rule. Rule 14.2(5) provides that an indictment may contain any count charging substantially the same offence as one sent for trial and any other count based on the prosecution evidence already served which the Crown Court has jurisdiction to try. Where the prosecutor intends to include in the draft indictment counts which differ materially from, or are additional to, those on which the defendant was sent for trial then the defendant should be given as much notice as possible, usually by service of a draft indictment, or a provisional draft indictment, at the earliest possible opportunity.

14A.2 There is no rule of law or practice which prohibits two indictments being in existence at the same time for the same offence against the same person and on the same facts. But the court will not allow the prosecution to proceed on both indictments. They cannot be tried together and the court will require the prosecution to elect the one on which the trial will proceed. Where different defendants have been separately sent for trial for offences which can lawfully be charged in the same indictment then it is permissible to join in one indictment counts based on the separate sendings for trial even if an indictment based on one of them already has been signed. Where necessary the court should be invited to exercise its powers of amendment under section 5 of the Indictments Act 1915.

14A.3 Save in the special circumstances described in the following paragraphs of this Practice Direction, it is undesirable that a large number of counts should be contained in one indictment. Where defendants on trial have a variety of offences alleged against them then, in the interests of effective case management, it is the court's responsibility to exercise its powers in accordance with the overriding objective set out in Part 1 of the Criminal Procedure Rules. The prosecution may be required to identify a selection of counts on which the trial should proceed, leaving a decision to be taken later whether to try any of the remainder. Where an indictment contains substantive counts and one or more related conspiracy counts, the court will expect the prosecution to justify the joinder. Failing justification, the

prosecution should be required to choose whether to proceed on the substantive counts or on the conspiracy counts. In any event, if there is a conviction on any counts that are tried, then those that have been postponed can remain on the file marked "not to be proceeded with without the leave of the court or the Court of Appeal". In the event that a conviction is later quashed on appeal, the remaining counts can be tried. Where necessary the court has power to order that an indictment be severed.

Multiple offending: trial by jury and then by judge alone

14A.4 Under sections 17 to 21 of the Domestic Violence, Crime and Victims Act 2004, the court may order that the trial of certain counts will be by jury in the usual way and, if the jury convicts, that other associated counts will be tried by judge alone. The use of this power is likely to be appropriate where justice cannot be done without charging a large number of separate offences and the allegations against the defendant appear to fall into distinct groups by reference to the identity of the victim, by reference to the dates of the offences, or by some other distinction in the nature of the offending conduct alleged.

14A.5 In such a case, it is essential to make clear from the outset the association asserted by the prosecutor between those counts to be tried by a jury and those counts which it is proposed should be tried by judge alone, if the jury convict on the former. A special form of indictment is prescribed for this purpose.

14A.6 An order for such a trial may be made only at a preparatory hearing. It follows that where the prosecutor intends to invite the court to order such a trial it will normally be appropriate to proceed as follows. The draft indictment served under Rule 14.1 should be in the form appropriate to such a trial. It should be accompanied by an application under Rule 15.3 for a preparatory hearing. This will ensure that the defendant is aware at the earliest possible opportunity of what the prosecution propose and of the proposed association of counts in the indictment. It is undesirable for a draft indictment in the usual form to be served where the prosecutor expects to apply for a two stage trial and hence, of necessity, for permission to amend the indictment at a later stage in order that it may be in the special form.

14A.7 On receipt of a draft two part indictment, a Crown Court officer should sign it at the end of Part Two. At the start of the preparatory hearing, the defendant should be arraigned on all counts in Part One of the indictment. Arraignment on Part Two need not take place until after there has been either a guilty plea to, or finding of guilt on, an associated count in Part One of the indictment.

14A.8 If the prosecution application is successful, the prosecutor should prepare an abstract of the indictment, containing the counts from Part One only, for use in the jury trial. Preparation of such an abstract does not involve "amendment" of the indictment. It is akin to where a defendant pleads guilty to certain counts in an indictment and is put in the charge of the jury on the remaining counts only.

14A.9 If the prosecution application for a two stage trial is unsuccessful, the prosecutor may apply to amend the indictment to remove from it any counts in Part Two which

would make jury trial on the whole indictment impracticable and to revert to a standard form of indictment. It will be a matter for the court whether arraignment on outstanding counts takes place at the preparatory hearing, or at a future date.

Multiple offending: count charging more than one incident

14A.10 Rule 14.2(2) of the Criminal Procedure Rules allows a single count to allege more than one incident of the commission of an offence in certain circumstances. Each incident must be of the same offence. The circumstances in which such a count may be appropriate include, but are not limited to, the following:

(a) the victim on each occasion was the same, or there was no identifiable individual victim as, for example, in a case of the unlawful importation of controlled drugs or of money laundering;

(b) the alleged incidents involved a marked degree of repetition in the method employed or in their location, or both;

(c) the alleged incidents took place over a clearly defined period, typically (but not necessarily) no more than about a year;

(d) in any event, the defence is such as to apply to every alleged incident without differentiation. Where what is in issue differs between different incidents, a single "multiple incidents" count will not be appropriate, though it may be appropriate to use two or more such counts according to the circumstances and to the issues raised by the defence.

14A.11 Even in circumstances such as those set out above, there may be occasions on which a prosecutor chooses not to use such a count, in order to bring the case within section 75(3)(a) of the Proceeds of Crime Act 2002 (criminal lifestyle established by conviction of three or more offences in the same proceedings): for example, because section 75(2)(c) of that Act does not apply (criminal lifestyle established by an offence committed over a period of at least six months). Where the prosecutor proposes such a course, it is unlikely that Part 1 of the Rules (the overriding objective) will require an indictment to contain a single "multiple incidents" count in place of a larger number of counts, subject to the general principles set out at 14A.3.

14A.12 For some offences, particularly sexual offences, the penalty for the offence may have changed during the period over which the alleged incidents took place. In such a case, additional "multiple incidents" counts should be used so that each count only alleges incidents to which the same maximum penalty applies.

14A.13 In other cases, such as sexual or physical abuse, a complainant may be in a position only to give evidence of a series of similar incidents without being able to specify when or the precise circumstances in which they occurred. In these cases, a 'multiple incidents' count may be desirable. If on the other hand, the complainant is able to identify particular incidents of the offence by reference to a date or other specific event, but alleges that in addition there were other incidents which the complainant is unable to specify, then it may be desirable to include separate counts for the identified incidents and a 'multiple incidents' count or counts alleging that incidents of the same offence occurred 'many' times. Using a 'multiple incidents' count may be an appropriate alternative to using 'specimen' counts in

some cases where repeated sexual or physical abuse is alleged. The choice of count will depend on the particular circumstances of the case and should be determined bearing in mind the implications for sentencing set out in *R v Canavan; R v Kidd; R v Shaw* [1998] 1 W.L.R. 604, [1998] 1 Cr. App. R. 79, [1998] 1 Cr. App. R. (S.) 243.

CPD II Preliminary proceedings 14B: VOLUNTARY BILLS OF INDICTMENT

14B.1 Section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933 and paragraph 2(6) of Schedule 3 to the Crime and Disorder Act 1998 allow the preferment of a bill of indictment by the direction or with the consent of a judge of the High Court. Bills so preferred are known as 'voluntary bills'.

14B.2 Applications for such consent must not only comply with each paragraph of the Indictments (Procedure) Rules 1971, SI 1971/2084, but must also be accompanied by:

(a) a copy of any charges on which the defendant has been sent for trial;
(b) a copy of any charges on which his or her sending for trial was refused by the magistrates' court;
(c) a copy of any existing indictment which has been preferred in consequence of his or her sending for trial;
(d) a summary of the evidence or other document which
  (i) identifies the counts in the proposed indictment on which he or she has been sent for trial (or which are substantially the same as charges on which he or she has been so sent), and
  (ii) in relation to each other count in the proposed indictment, identifies the pages in the accompanying statements and exhibits where the essential evidence said to support that count is to be found.

14B.3 These requirements should be complied with in relation to each defendant named in the indictment for which consent is sought, whether or not it is proposed to prefer any new count against him or her.

14B.4 The preferment of a voluntary bill is an exceptional procedure. Consent should only be granted where good reason to depart from the normal procedure is clearly shown and only where the interests of justice, rather than considerations of administrative convenience, require it.

14B.5 Neither the 1933 Act, the 1998 Act nor the 1971 Rules expressly require a prosecuting authority applying for consent to the preferment of a voluntary bill to give notice of the application to the prospective defendant, nor to serve on him or her a copy of documents delivered to the judge; nor is it expressly required that the prospective defendant have any opportunity to make any submissions to the judge, whether in writing or orally.

14B.6 However, the Attorney-General previously issued guidance to prosecutors on the procedures to be adopted in seeking judicial consent to the preferment of voluntary bills. Those procedures remain applicable and prosecutors should:

(a) on making an application for consent to preferment of a voluntary bill, give notice to the prospective defendant that such application has been made;
(b) at about the same time, serve on the prospective defendant a copy of all the documents delivered to the judge (save to the extent that these have already been served on him or her);
(c) inform the prospective defendant that he or she may make submissions in writing to the judge, provided that he or she does so within nine working days of the giving of notice under (a) above.

14B.7 Prosecutors must follow these procedures unless there are good reasons for not doing so, in which case prosecutors must inform the judge that the procedures have not been followed and seek leave to dispense with all or any of them. Judges should not give leave to dispense unless good reasons are shown.

14B.8 A judge to whom application for consent to the preferment of a voluntary bill is made will, of course, wish to consider carefully the documents submitted by the prosecutor and any written submissions made by the prospective defendant, and may properly seek any necessary amplification. The judge may invite oral submissions from either party, or accede to a request for an opportunity to make oral submissions, if the judge considers it necessary or desirable to receive oral submissions in order to make a sound and fair decision on the application. Any such oral submissions should be made on notice to the other party and in open court.

Part 15 Preparatory hearings in the Crown Court

Part 16 Reporting, etc. restrictions

CPD II Preliminary proceedings 16A: UNOFFICIAL SOUND RECORDING OF PROCEEDINGS

16A.1 Section 9 of the Contempt of Court Act 1981 contains provisions governing the unofficial use of equipment for recording sound in court.
Section 9(1) provides that it is a contempt of court
(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the permission of the court;
(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;
(c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).
These provisions do not apply to the making or use of sound recordings for purposes of official transcripts of the proceedings, upon which the Act imposes no restriction whatever.

16A.2 The discretion given to the court to grant, withhold or withdraw leave to use equipment for recording sound or to impose conditions as to the use of the recording is unlimited, but the following factors may be relevant to its exercise:

(a) the existence of any reasonable need on the part of the applicant for leave, whether a litigant or a person connected with the press or broadcasting, for the recording to be made;

(b) the risk that the recording could be used for the purpose of briefing witnesses out of court;

(c) any possibility that the use of the recorder would disturb the proceedings or distract or worry any witnesses or other participants.

16A.3 Consideration should always be given whether conditions as to the use of a recording made pursuant to leave should be imposed. The identity and role of the applicant for leave and the nature of the subject matter of the proceedings may be relevant to this.

16A.4 The particular restriction imposed by section 9(1)(b) applies in every case, but may not be present in the mind of every applicant to whom leave is given. It may therefore be desirable on occasion for this provision to be drawn to the attention of those to whom leave is given.

16A.5 The transcript of a permitted recording is intended for the use of the person given leave to make it and is not intended to be used as, or to compete with, the official transcript mentioned in section 9(4).

16A.6 Where a contravention of section 9(1) is alleged, the procedure in section 2 of Part 62 of the Rules should be followed. Section 9(3) of the 1981 Act permits the court to 'order the instrument, or any recording made with it, or both, to be forfeited'. The procedure at Rule 16.10 should be followed.

CPD II Preliminary proceedings 16B: RESTRICTIONS ON REPORTING PROCEEDINGS

16B.1 Open justice is an essential principle in the criminal courts but the principle is subject to some statutory restrictions. These restrictions are either automatic or discretionary. Guidance is provided in the joint publication of the Judicial College, the Newspaper Society, the Society of Editors and Times Newspapers Limited entitled 'Reporting Restrictions in the Criminal Courts'. The current version is the second edition dated October 2009 and is available at http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/crown_court_reporting_restrictions_021009.pdf (Note that the HMCTS protocol referred to in the guidance has since been updated.)

16B.2 Where a restriction is automatic no order can or should be made in relation to matters falling within the relevant provisions. However, the court may, if it considers it appropriate to do so, give a reminder of the existence of the automatic restriction. The court may also discuss the scope of the restriction and any particular risks in the specific case in open court with representatives of the press present. Such judicial observations cannot constitute an order binding on the

editor or the reporter although it is anticipated that a responsible editor would consider them carefully before deciding what should be published. It remains the responsibility of those reporting a case to ensure that restrictions are not breached.

16B.3 Before exercising its discretion to impose a restriction the court must follow precisely the statutory provisions under which the order is to be made, paying particular regard to what has to be established, by whom and to what standard.

16B.4 Without prejudice to the above paragraph, certain general principles apply to the exercise of the court's discretion:

(a) The court must have regard to Parts 16 and 29 of the Criminal Procedure Rules.

(b) The court must keep in mind the fact that every order is a departure from the general principle that proceedings shall be open and freely reported.

(c) Before making any order the court must be satisfied that the purpose of the proposed order cannot be achieved by some lesser measure e.g. the grant of special measures, screens or the clearing of the public gallery (usually subject to a representative/s of the media remaining).

(d) The terms of the order must be proportionate so as to comply with Article 10 ECHR (freedom of expression).

(e) No order should be made without giving other parties to the proceedings and any other interested party, including any representative of the media, an opportunity to make representations.

(f) Any order should provide for any interested party who has not been present or represented at the time of the making of the order to have permission to apply within a limited period e.g. 24 hours.

(g) The wording of the order is the responsibility of the judge or Bench making the order: it must be in precise terms and, if practicable, agreed with the advocates.

(h) The order must be in writing and must state:

(i) the power under which it is made;

(ii) its precise scope and purpose; and

(iii) the time at which it shall cease to have effect, if appropriate.

(i) The order must specify, in every case, whether or not the making or terms of the order may be reported or whether this itself is prohibited. Such a report could cause the very mischief which the order was intended to prevent.

16B.5 A series of template orders have been prepared by the Judicial College and are available as an appendix to the Crown Court Bench Book Companion; these template orders should generally be used.

16B.6 A copy of the order should be provided to any person known to have an interest in reporting the proceedings and to any local or national media who regularly report proceedings in the court.

16B.7 Court staff should be prepared to answer any enquiry about a specific case; but it is and will remain the responsibility of anyone reporting a case to ensure that no breach of any order occurs and the onus rests on such person to make enquiry in case of doubt.

Part 17 Extradition

III Custody and bail

Part 18 Warrants for arrest, detention or imprisonment

Part 19 Bail and custody time limits

CPD III Custody and bail 19A: BAIL BEFORE SENDING FOR TRIAL

19A.1 Before the Crown Court can deal with an application under Rule 19.8 by a defendant after a magistrates' court has withheld bail, it must be satisfied that the magistrates' court has issued a certificate, under section 5(6A) of the Bail Act 1976, that it heard full argument on the application for bail before it refused the application. The certificate of full argument is produced by the magistrates' court's computer system, Libra, as part of the GENORD (General Form of Order). Two hard copies are produced, one for the defence and one for the prosecution. (Some magistrates' courts may also produce a manual certificate which will usually be available from the justices' legal adviser at the conclusion of the hearing; the GENORD may not be produced until the following day.) Under Rule 19.4(4), the magistrates' court officer will provide the defendant with a certificate that the court heard full argument. However, it is the responsibility of the defence, as the applicant in the Crown Court, to ensure that a copy of the certificate of full argument is provided to the Crown Court as part of the application (Rule 19.8(3)(e)). The applicant's solicitors should attach a copy of the certificate to the bail application form. If the certificate is not enclosed with the application form, it will be difficult to avoid some delay in listing.

Venue

19A.2 Applications should be made to the court to which the defendant will be, or would have been, sent for trial. In the event of an application in a purely summary case, it should be made to the Crown Court centre which normally receives Class 3 work. The hearing will be listed as a chambers matter, unless a judge has directed otherwise.

CPD III Custody and bail 19B: BAIL: FAILURE TO SURRENDER AND TRIALS IN ABSENCE

19B.1 The failure of defendants to comply with the terms of their bail by not surrendering, or not doing so at the appointed time, undermines the administration of justice and disrupts proceedings. The resulting delays impact on victims, witnesses and other court users and also waste costs. A defendant's failure to surrender affects not only the case with which he or she is concerned, but also the court's ability to administer justice more generally, by damaging the confidence of victims, witnesses and the public in the effectiveness of the court system and the judiciary. It is, therefore, most important that defendants who are granted bail appreciate the significance of the obligation to surrender to custody in accordance with the terms of their bail and that courts take appropriate action, if they fail to do so.

19B.2 A defendant who will be unable for medical reasons to attend court in accordance with his or her bail must obtain a certificate from his or her general practitioner or another appropriate medical practitioner such as the doctor with care of the defendant at a hospital. This should be obtained in advance of the hearing and conveyed to the court through the defendant's legal representative. In order to minimise the disruption to the court and to others, particularly witnesses if the case is listed for trial, the defendant should notify the court through his legal representative as soon as his inability to attend court becomes known.

19B.3 Guidance has been produced by the British Medical Association and the Crown Prosecution Service on the roles and responsibilities of medical practitioners when issuing medical certificates in criminal proceedings: link. Judges and magistrates should seek to ensure that this guidance is followed. However, it is a matter for each individual court to decide whether, in any particular case, the issued certificate should be accepted. Without a medical certificate or if an unsatisfactory certificate is provided, the court is likely to consider that the defendant has failed to surrender to bail.

19B.4 If a defendant fails to surrender to his or her bail there are at least four courses of action for the courts to consider taking:-

(a) imposing penalties for the failure to surrender;
(b) revoking bail or imposing more stringent conditions;
(c) conducting trials in the absence of the defendant; and
(d) ordering that some or all of any sums of money lodged with the court as a security or pledged by a surety as a condition on the grant of bail be forfeit.

The relevant sentencing guideline is the Definitive Guideline Fail to Surrender to Bail. Under section 125(1) of the Coroners and Justice Act 2009, for offences committed on or after 6 April 2010, the court must follow the relevant guideline unless it would be contrary to the interests of justice to do so. The guideline can be obtained from the Sentencing Council's website: http://sentencingcouncil.judiciary.gov.uk/guidelines/guidelines-to-download.htm

CPD III Custody and bail 19C: PENALTIES FOR FAILURE TO SURRENDER

Initiating Proceedings – Bail granted by a police officer

19C.1 When a person has been granted bail by a police officer to attend court and subsequently fails to surrender to custody, the decision whether to initiate proceedings for a section 6(1) or section 6(2) offence will be for the police / prosecutor and proceedings are commenced in the usual way.

19C.2 The offence in this form is a summary offence although section 6(10) to (14) of the Bail Act 1976, inserted by section 15(3) of the Criminal Justice Act 2003, disapplies section 127 of the Magistrates' Courts Act 1980 and provides for alternative time limits for the commencement of proceedings. The offence should be dealt with on the first appearance after arrest, unless an adjournment is necessary, as it will be relevant in considering whether to grant bail again.

Initiating Proceedings – Bail granted by a court

19C.3 Where a person has been granted bail by a court and subsequently fails to surrender to custody, on arrest that person should normally be brought as soon as appropriate before the court at which the proceedings in respect of which bail was granted are to be heard. (There is no requirement to lay an information within the time limit for a Bail Act offence where bail was granted by the court).

19C.4 Given that bail was granted by a court, it is more appropriate that the court itself should initiate the proceedings by its own motion although the prosecutor may invite the court to take proceedings, if the prosecutor considers proceedings are appropriate.

Timing of disposal

19C.5 Courts should not, without good reason, adjourn the disposal of a section 6(1) or section 6(2) Bail Act 1976 offence (failure to surrender) until the conclusion of the proceedings in respect of which bail was granted but should deal with defendants as soon as is practicable. In deciding what is practicable, the court must take into account when the proceedings in respect of which bail was granted are expected to conclude, the seriousness of the offence for which the defendant is already being prosecuted, the type of penalty that might be imposed for the Bail Act offence and the original offence, as well as any other relevant circumstances.

19C.6 If the Bail Act offence is adjourned alongside the substantive proceedings, then it is still necessary to consider imposing a separate penalty at the trial. In addition, bail should usually be revoked in the meantime. Trial in the absence of the defendant is not a penalty for the Bail Act offence and a separate penalty may be imposed for the Bail Act offence.

Conduct of Proceedings

19C.7 Proceedings under section 6 of the Bail Act 1976 may be conducted either as a summary offence or as a criminal contempt of court. Where proceedings are commenced by the police or prosecutor, the prosecutor will conduct the proceedings and, if the matter is contested, call the evidence. Where the court initiates proceedings, with or without an invitation from the prosecutor, the court may expect the assistance of the prosecutor, such as in cross-examining the defendant, if required.

19C.8 The burden of proof is on the defendant to prove that he had reasonable cause for his failure to surrender to custody (section 6(3) of the Bail Act 1976).

Sentencing for a Bail Act offence

19C.9 A defendant who commits an offence under section 6(1) or section 6(2) of the Bail Act 1976 commits an offence that stands apart from the proceedings in respect of which bail was granted. The seriousness of the offence can be reflected by an appropriate and generally separate penalty being imposed for the Bail Act offence.

19C.10 As noted above, there is a sentencing guideline on sentencing offenders for Bail Act offences and this must be followed unless it would be contrary to the interests of justice to do so. Where the appropriate penalty is a custodial sentence, consecutive sentences should be imposed unless there are circumstances that make this inappropriate.

CPD III Custody and bail 19D: RELATIONSHIP BETWEEN THE BAIL ACT OFFENCE AND FURTHER REMANDS ON BAIL OR IN CUSTODY

19D.1 The court at which the defendant is produced should, where practicable and legally permissible, arrange to have all outstanding cases brought before it (including those from different courts) for the purpose of progressing matters and dealing with the question of bail. This is likely to be practicable in the magistrates' court where cases can easily be transferred from one magistrates' court to another. Practice is likely to vary in the Crown Court. If the defendant appears before a different court, for example because he is charged with offences committed in another area, and it is not practicable for all matters to be concluded by that court then the defendant may be remanded on bail or in custody, if appropriate, to appear before the first court for the outstanding offences to be dealt with.

19D.2 When a defendant has been convicted of a Bail Act offence, the court should review the remand status of the defendant, including the conditions of that bail, in respect of all outstanding proceedings against the defendant.

19D.3 Failure by the defendant to surrender or a conviction for failing to surrender to bail in connection with the main proceedings will be significant factors weighing against the re-granting of bail.

19D.4 Whether or not an immediate custodial sentence has been imposed for the Bail Act offence, the court may, having reviewed the defendant's remand status, also remand the defendant in custody in the main proceedings.

CPD III Custody and bail 19E: TRIALS IN ABSENCE

19E.1 A defendant has a right, in general, to be present and to be represented at his trial. However, a defendant may choose not to exercise those rights, such as by voluntarily absenting himself and failing to instruct his lawyers adequately so that they can represent him.

19E.2 The court has a discretion as to whether a trial should take place or continue in the defendant's absence and must exercise its discretion with due regard for the interests of justice. The overriding concern must be to ensure that such a trial is as fair as circumstances permit and leads to a just outcome. If the defendant's absence is due to involuntary illness or incapacity it would very rarely, if ever, be right to exercise the discretion in favour of commencing or continuing the trial.

Trials on Indictment

19E.3 Proceeding in the absence of a defendant is a step which ought normally to be taken only if it is unavoidable. The court must exercise its discretion as to whether a trial should take place or continue in the defendant's absence with the utmost care and caution. Due regard should be had to the judgment of Lord Bingham in *R v Jones* [2002] UKHL 5, [2003] 1 A.C. 1, [2002] 2 Cr. App. R. 9. Circumstances to be taken into account before proceeding include:

i) the conduct of the defendant,
ii) the disadvantage to the defendant,
iii) the public interest, taking account of the inconvenience and hardship to witnesses, and especially to any complainant, of a delay; if the witnesses have attended court and are ready to give evidence, that will weigh in favour of continuing with the trial,
iv) the effect of any delay,
v) whether the attendance of the defendant could be secured at a later hearing, and
vii) the likely outcome if the defendant is found guilty.

Even if the defendant is voluntarily absent, it is still generally desirable that he or she is represented.

Trials in the Magistrates' Courts

19E.4 Section 11 of the Magistrates' Courts Act 1980 applies. If either party is absent, the court should follow the procedure at Rule 37.11. Subject to the provisions of the statute, the principles outlined above are applicable. Benches and legal advisers will note that the presumption at Rule 37.11(3)(a) does not apply if the defendant is under 18 years of age.

CPD III Custody and bail 19F: FORFEITURE OF MONIES LODGED AS SECURITY OR PLEDGED BY A SURETY/ESTREATMENT OF RECOGNIZANCES

19F.1 A surety undertakes to forfeit a sum of money if the defendant fails to surrender as required. Considerable care must be taken to explain that obligation and the consequences before a surety is taken. This system, in one form or another, has great antiquity. It is immensely valuable. A court concerned that a defendant will fail to surrender will not normally know that defendant personally, nor indeed much about him. When members of the community who do know the defendant say they trust him to surrender and are prepared to stake their own money on that trust, that can have a powerful influence on the decision of the court as to whether or not to grant bail. There are two important side-effects. The first is that the surety will keep an eye on the defendant, and report to the authorities if there is a

concern that he will abscond. In those circumstances, the surety can withdraw. The second is that a defendant will be deterred from absconding by the knowledge that if he does so then his family or friends who provided the surety will lose their money. In the experience of the courts, it is comparatively rare for a defendant to fail to surrender when meaningful sureties are in place.

19F.2 Any surety should have the opportunity to make representations to the defendant to surrender himself, in accordance with their obligations.

19F.3 The court should not wait or adjourn a decision on estreatment of sureties or securities until such time, if any, that the bailed defendant appears before the court. It is possible that any defendant who apparently absconds may have a defence of reasonable cause to the allegation of failure to surrender. If that happens, then any surety or security estreated would be returned. The reason for proceeding is that the defendant may never surrender, or may not surrender for many years. The court should still consider the sureties' obligations if that happens. Moreover, the longer the matter is delayed the more probable it is that the personal circumstances of the sureties will change.

19F.4The court should follow the procedure at Rule 19.15 of the Criminal Procedure Rules. Before the court makes a decision, it should give the sureties the opportunity to make representations, either in person, through counsel or by statement.

19F.5 The court has discretion to forfeit the whole sum, part only of the sum, or to remit the sum. The starting point is that the surety is forfeited in full. It would be unfortunate if this valuable method of allowing a defendant to remain at liberty were undermined. Courts would have less confidence in the efficacy of sureties. It is also important to note that a defendant who absconds without in any way forewarning his sureties does not thereby release them from any or all of their responsibilities. Even if a surety does his best, he remains liable for the full amount, except at the discretion of the court. However, all factors should be taken into account and the following are noted for guidance only:

i) The presence or absence of culpability is a factor, but is not in itself a reason to reduce or set aside the obligations entered into by the surety.
ii) The means of a surety, and in particular changed means, are relevant.
iii) The court should forfeit no more than is necessary, in public policy, to maintain the integrity and confidence of the system of taking sureties.

CPD III Custody and bail 19G: BAIL DURING TRIAL

19G.1 The following should be read subject to the Bail Act 1976.

19G.2 Once a trial has begun the further grant of bail, whether during the short adjournment or overnight, is in the discretion of the trial judge or trial Bench. It

may be a proper exercise of this discretion to refuse bail during the short adjournment if the accused cannot otherwise be segregated from witnesses and jurors.

19G.3 An accused who was on bail while on remand should not be refused bail during the trial unless, in the opinion of the court, there are positive reasons to justify this refusal. Such reasons might include:

(a) that a point has been reached where there is a real danger that the accused will abscond, either because the case is going badly for him, or for any other reason;

(b) that there is a real danger that he may interfere with witnesses, jurors or co-defendants.

19G.4 Once the jury has returned a guilty verdict or a finding of guilt has been made, a further renewal of bail should be decided in the light of the gravity of the offence, any friction between co-defendants and the likely sentence to be passed in all the circumstances of the case.

CPD III Custody and bail 19H: CROWN COURT JUDGE'S CERTIFICATON OF FITNESS TO APPEAL AND APPLICATIONS TO THE CROWN COURT FOR BAIL PENDING APPEAL

19H.1 The trial or sentencing judge may grant a certificate of fitness for appeal (see, for example, sections 1(2)(b) and 11(1A) of the Criminal Appeal Act 1968); the judge in the Crown Court should only certify cases in exceptional circumstances. The Crown Court judge should use the Criminal Appeal Office Form C (Crown Court Judge's Certificate of fitness for appeal) which is available to court staff on the HMCTS intranet.

19H.2 The judge may well think it right to encourage the defendant's advocate to submit to the court, and serve on the prosecutor, before the hearing of the application, a draft of the grounds of appeal which he will ask the judge to certify on Form C.

19H.3 The first question for the judge is then whether there exists a particular and cogent ground of appeal. If there is no such ground, there can be no certificate; and if there is no certificate there can be no bail. A judge should not grant a certificate with regard to sentence merely in the light of mitigation to which he has, in his opinion, given due weight, nor in regard to conviction on a ground where he considers the chance of a successful appeal is not substantial. The judge should bear in mind that, where a certificate is refused, application may be made to the Court of Appeal for leave to appeal and for bail; it is expected that certificates will only be granted in exceptional circumstances.

19H.4 Defence advocates should note that the effect of a grant of a certificate is to remove the need for leave to appeal to be granted by the Court of Appeal. It does not in itself commence the appeal. The completed Form C will be sent by the Crown Court to the Criminal Appeal Office; it is not copied to the parties. The procedures in Part 68 of the Criminal Procedure Rules should be followed.

19H.5 Bail pending appeal to the Court of Appeal (Criminal Division) may be granted by the trial or sentencing judge if they have certified the case as fit for appeal (see sections 81(1)(f) and 81(1B) of the Senior Courts Act 1981). Bail can only be granted in the Crown Court within 28 days of the conviction or sentence which is to be the subject of the appeal and may not be granted if an application for bail has already been made to the Court of Appeal. The procedure for bail to be granted by a judge of the Crown Court pending an appeal is governed by Part 19 of the Criminal Procedure Rules. The Crown Court judge should use the Criminal Appeal Office Form BC (Crown Court Judge's Order granting bail) which is available to court staff on the HMCTS intranet.

19H.6 The length of the period which might elapse before the hearing of any appeal is not relevant to the grant of a certificate; but, if the judge does decide to grant a certificate, it may be one factor in the decision whether or not to grant bail. If bail is granted, the judge should consider imposing a condition of residence in line with the practice in the Court of Appeal (Criminal Division).

Part 20 – [Empty]

IV Disclosure

Part 21 - [Empty]

Part 22 Disclosure

CPD IV Disclosure 22A: DISCLOSURE OF UNUSED MATERIAL

22A.1 Disclosure is a vital part of the preparation for trial, both in the magistrates' courts and in the Crown Court. All parties must be familiar with their obligations, in particular under the Criminal Procedure and Investigations Act 1996 as amended and the Code issued under that Act, and must comply with the relevant judicial protocol and guidelines from the Attorney-General. These documents have recently been revised and the new guidance will be issued shortly as *Judicial Protocol on the Disclosure of Unused Material in Criminal Cases* and the *Attorney-General's Guidelines on Disclosure*. The new documents should be read together as complementary, comprehensive guidance. They will be available electronically on the respective websites.

22A.2 In addition, certain procedures are prescribed under Part 22 of the Rules and these should be followed. The notes to Part 22 contain a useful summary of the requirements of the CPIA 1996 as amended.

Part 23 - [Empty]

Part 24 - [Empty]

Part 25 - [Empty]

Part 26 - [Empty]

V Evidence

Part 27 Witness statements

CPD V Evidence 27A: EVIDENCE BY WRITTEN STATEMENT

27A.1 Where the prosecution proposes to tender written statements in evidence under section 9 of the Criminal Justice Act 1967, it will frequently be necessary for certain statements to be edited. This will occur either because a witness has made more than one statement whose contents should conveniently be reduced into a single, comprehensive statement, or where a statement contains inadmissible, prejudicial or irrelevant material. Editing of statements must be done by a Crown Prosecutor (or by a legal representative, if any, of the prosecutor if the case is not being conducted by the Crown Prosecution Service) and not by a police officer.

Composite statements

27A.2 A composite statement giving the combined effect of two or more earlier statements must be prepared in compliance with the requirements of section 9 of the 1967 Act; and must then be signed by the witness.

Editing single statements

27A.3 There are two acceptable methods of editing single statements. They are:-

(a) By marking copies of the statement in a way which indicates the passages on which the prosecution will not rely. This merely indicates that the prosecution will not seek to adduce the evidence so marked. The original signed statement to be tendered to the court is not marked in any way.

The marking on the copy statement is done by lightly striking out the passages to be edited, so that what appears beneath can still be read, or by bracketing, or by a combination of both. It is not permissible to produce a photocopy with the deleted material obliterated, since this would be contrary to the requirement that the defence and the court should be served with copies of the signed original statement.

Whenever the striking out / bracketing method is used, it will assist if the following words appear at the foot of the frontispiece or index to any bundle of copy statements to be tendered:
'The prosecution does not propose to adduce evidence of those passages of the attached copy statements which have been struck out and / or bracketed (nor will it seek to do so at the trial unless a notice of further evidence is served)'.

(b) By obtaining a fresh statement, signed by the witness, which omits the offending material, applying the procedure for composite statements above.

27A.4 In most cases where a single statement is to be edited, the striking out/ bracketing method will be the more appropriate, but the taking of a fresh statement is preferable in the following circumstances:

(a) When a police (or other investigating) officer's statement contains details of interviews with more suspects than are eventually charged, a fresh statement should be prepared and signed, omitting all details of interview with those not charged except, insofar as it is relevant, for the bald fact that a certain named person was interviewed at a particular time, date and place.

(b) When a suspect is interviewed about more offences than are eventually made the subject of charges, a fresh statement should be prepared and signed, omitting all questions and answers about the uncharged offences unless either they might appropriately be taken into consideration, or evidence about those offences is admissible on the charges preferred. It may, however, be desirable to replace the omitted questions and answers with a phrase such as: *'After referring to some other matters, I then said, "… … …" ',* so as to make it clear that part of the interview has been omitted.

(c) A fresh statement should normally be prepared and signed if the only part of the original on which the prosecution is relying is only a small proportion of the whole, although it remains desirable to use the alternative method if there is reason to believe that the defence might itself wish to rely, in mitigation or for any other purpose, on at least some of those parts which the prosecution does not propose to adduce.

(d) When the passages contain material which the prosecution is entitled to withhold from disclosure to the defence.

27A.5 Prosecutors should also be aware that, where statements are to be tendered under section 9 of the 1967 Act in the course of summary proceedings, there will be a need to prepare fresh statements excluding inadmissible or prejudicial material, rather than using the striking out or bracketing method.

27A.6 Whenever a fresh statement is taken from a witness and served in evidence, the earlier, unedited statement(s) becomes unused material and should be scheduled and reviewed for disclosure to the defence in the usual way.

CPD V Evidence 27B: VIDEO RECORDED EVIDENCE IN CHIEF

27B.1 The procedure for making an application for leave to admit into evidence video recorded evidence in chief under section 27 of the Youth Justice and Criminal Evidence Act 1999 is given in Part 29 of the Criminal Procedure Rules.

27B.2 Where a court, on application by a party to the proceedings or of its own motion, grants leave to admit a video recording in evidence under section 27(1) of the 1999 Act, it may direct that any part of the recording be excluded (section 27(2) and (3)). When such direction is given, the party who made the application to admit the video recording must edit the recording in accordance with the judge's directions and send a copy of the edited recording to the appropriate officer of the Crown Court and to every other party to the proceedings.

27B.3 Where a video recording is to be adduced during proceedings before the Crown Court, it should be produced and proved by the interviewer, or any other person who was present at the interview with the witness at which the recording was made. The applicant should ensure that such a person will be available for this purpose, unless the parties have agreed to accept a written statement in lieu of attendance by that person.

27B.4 Once a trial has begun, if, by reason of faulty or inadequate preparation or for some other cause, the procedures set out above have not been properly complied with and an application is made to edit the video recording, thereby necessitating an adjournment for the work to be carried out, the court may, at its discretion, make an appropriate award of costs.

CPD V Evidence 27C: EVIDENCE OF AUDIO AND VIDEO RECORDED INTERVIEWS

27C.1 The interrogation of suspects is primarily governed by Code C, one of the Codes of Practice under the Police and Criminal Evidence Act 1984 ('PACE'). Under that Code, interviews must normally be contemporaneously recorded. Under PACE Code E, interviews conducted at a police station concerning an indictable offence must normally be audio-recorded. In practice, most interviews are audio-recorded under Code E, or video-recorded under Code F, and it is best practice to do so. The questioning of terrorism suspects is governed separately by Code H. The Codes are available electronically on the Home Office website.

27C.2Where a record of the interview is to be prepared, this should be in accordance with the current national guidelines, as envisaged by Note 5A of Code E.

27C.3 If the prosecution wishes to rely on the defendant's interview in evidence, the prosecution should seek to agree the record with the defence. Both parties should have received a copy of the audio or video recording, and can check the record against the recording. The record should be edited (see below) if inadmissible matters are included within it and, in particular if the interview is lengthy, the prosecution should seek to shorten it by editing or summary.

27C.4 If the record is agreed there is usually no need for the audio or video recording to be played in court. It is a matter for the discretion of the trial judge, but usual

practice is for edited copies of the record to be provided to the court, and to the jury if there is one, and for the prosecution advocate to read the interview with the interviewing officer or the officer in the case, as part of the officer's evidence in chief, the officer reading the interviewer and the advocate reading the defendant and defence representative. In the magistrates' court, the Bench sometimes retire to read the interview themselves, and the document is treated as if it had been read aloud in court. This is permissible, but Rule 37.5 should be followed.

27C.5 Where the prosecution intends to adduce the interview in evidence, and agreement between the parties has not been reached about the record, sufficient notice must be given to allow consideration of any amendment to the record, or the preparation of any transcript of the interview, or any editing of a recording for the purpose of playing it in court. To that end, the following practice should be followed.

(a) Where the defence is unable to agree a record of interview or transcript (where one is already available) the prosecution should be notified at latest at the Plea and Case Management Hearing ('PCMH'), with a view to securing agreement to amend. The notice should specify the part to which objection is taken, or the part omitted which the defence consider should be included. A copy of the notice should be supplied to the court within the period specified above. The PCMH form inquires about the admissibility of the defendant's interview and shortening by editing or summarising for trial.

(b) If agreement is not reached and it is proposed that the audio or video recording or part of it be played in court, notice should be given to the prosecution by the defence as ordered at the PCMH, in order that the advocates for the parties may agree those parts of the audio or video recording that should not be adduced and that arrangements may be made, by editing or in some other way, to exclude that material. A copy of the notice should be supplied to the court.

(c) Notice of any agreement reached should be supplied to the court by the prosecution, as soon as is practicable.

27C.6 Alternatively, if, the prosecution advocate proposes to play the audio or video recording or part of it, the prosecution should at latest at the PCMH, notify the defence and the court. The defence should notify the prosecution and the court within 14 days of receiving the notice, if they object to the production of the audio or video recording on the basis that a part of it should be excluded. If the objections raised by the defence are accepted, the prosecution should prepare an edited recording, or make other arrangements to exclude the material part; and should notify the court of the arrangements made.

27C.7 If the defendant wishes to have the audio or video recording or any part of it played to the court, the defence should provide notice to the prosecution and the court at latest at the PCMH. The defence should also, at that time, notify the prosecution of any proposals to edit the recording and seek the prosecution's agreement to those amendments.

27C.8 Whenever editing or amendment of a record of interview or of an audio or video recording or of a transcript takes place, the following general principles should be followed:

(i) Where a defendant has made a statement which includes an admission of one or more other offences, the portion relating to other offences should be omitted unless it is or becomes admissible in evidence;

(ii) Where the statement of one defendant contains a portion which exculpates him or her and partly implicates a co-defendant in the trial, the defendant making the statement has the right to insist that everything relevant which is exculpatory goes before the jury. In such a case the judge must be consulted about how best to protect the position of the co-defendant.

27C.9 If it becomes necessary for either party to access the master copy of the audio or video recording, they should give notice to the other party and follow the procedure in PACE Code E at section 6.

27C.10 If there is a challenge to the integrity of the master recording, notice and particulars should be given to the court and to the prosecution by the defence as soon as is practicable. The court may then, at its discretion, order a case management hearing or give such other directions as may be appropriate.

27C.11 If an audio or video recording is to be adduced during proceedings before the Crown Court, it should be produced and proved in a witness statement by the interviewing officer or any other officer who was present at the interview at which the recording was made. The prosecution should ensure that the witness is available to attend court if required by the defence in the usual way.

27C.12 It is the responsibility of the prosecution to ensure that there is a person available to operate any audio or video equipment needed during the course of the proceedings. Subject to their other responsibilities, the court staff may be able to assist.

27C.13 If either party wishes to present audio or video evidence, that party must ensure, in advance of the hearing, that the evidence is in a format that is compatible with the court's equipment, and that the material to be used does in fact function properly in the relevant court room.

27C.14 In order to avoid the necessity for the court to listen to or watch lengthy or irrelevant material before the relevant part of a recording is reached, counsel shall indicate to the equipment operator those parts of a recording which it may be necessary to play. Such an indication should, so far as possible, be expressed in terms of the time track or other identifying process used by the interviewing police force and should be given in time for the operator to have located those parts by the appropriate point in the trial.

27C.15 Once a trial has begun, if, by reason of faulty preparation or for some other cause, the procedures above have not been properly complied with, and an application is made to amend the record of interview or transcript or to edit the recording, as the case may be, thereby making necessary an adjournment for the work to be carried out, the court may make at its discretion an appropriate award of costs.

27C.16 Where a case is listed for hearing on a date which falls within the time limits set out above, it is the responsibility of the parties to ensure that all the necessary steps are taken to comply with this Practice Direction within such shorter period as is available.

Part 28 Witness summonses, warrants and orders

CPD V Evidence 28A: WARDS OF COURT AND CHILDREN SUBJECT TO CURRENT FAMILY PROCEEDINGS

28A.1 Where police wish to interview a child who is subject to current family proceedings, leave of the Family Court is only required where such an interview may lead to a child disclosing information confidential to those proceedings and not otherwise available to the police under Working Together to Safeguard Children (March 2013), a guide to inter-agency working to safeguard and promote the welfare of children: www.workingtogetheronline.co.uk/chapters/contents.html

28A.2 Where exceptionally the child to be interviewed or called as a witness in criminal proceedings is a Ward of Court then the leave of the court which made the wardship order will be required.

28A.3 Any application for leave in respect of any such child must be made to the court in which the relevant family proceedings are continuing and must be made on notice to the parents, any actual carer (e.g. relative or foster parent) and, in care proceedings, to the local authority and the guardian. In private proceedings the Family Court Reporter (if appointed) should be notified.

28A.4 If the police need to interview the child without the knowledge of another party (usually a parent or carer), they may make the application for leave without giving notice to that party.

28A.5 Where leave is given the order should ordinarily give leave for any number of interviews that may be required. However, anything beyond that actually authorised will require a further application.

28A.6 Exceptionally the police may have to deal with complaints by or allegations against such a child immediately without obtaining the leave of the court as, for example

(a) a serious offence against a child (like rape) where immediate medical examination and collection of evidence is required; or

(b) where the child is to be interviewed as a suspect.

When any such action is necessary, the police should, in respect of each and every interview, notify the parents and other carer (if any) and the Family Court Reporter

(if appointed). In care proceedings the local authority and guardian should be notified. The police must comply with all relevant Codes of Practice when conducting any such interview.

28A.7 The Family Court should be appraised of the position at the earliest reasonable opportunity by one of the notified parties and should thereafter be kept informed of any criminal proceedings.

28A.8 No evidence or document in the family proceedings or information about the proceedings should be disclosed into criminal proceedings without the leave of the Family Court.

Part 29 Measures to assist a witness or defendant to give evidence

CPD V Evidence 29A: MEASURES TO ASSIST A WITNESS OR DEFENDANT TO GIVE EVIDENCE

29A.1 For special measures applications, the procedures at Part 29 should be followed. However, assisting a vulnerable witness to give evidence is not merely a matter of ordering the appropriate measure. Further directions about vulnerable people in the courts, ground rules hearings and intermediaries are given in the Practice Direction accompanying Part 3.

29A.2 Special measures need not be considered or ordered in isolation. The needs of the individual witness should be ascertained, and a combination of special measures may be appropriate. For example, if a witness who is to give evidence by live link wishes, screens can be used to shield the live link screen from the defendant and the public, as would occur if screens were being used for a witness giving evidence in the court room.

CPD V Evidence 29B: WITNESSES GIVING EVIDENCE BY LIVE LINK

29B.1 A special measures direction for the witness to give evidence by live link may also provide for a specified person to accompany the witness (Rule 29.10(f)). In determining who this should be, the court must have regard to the wishes of the witness. The presence of a supporter is designed to provide emotional support to the witness, helping reduce the witness's anxiety and stress and contributing to the ability to give best evidence. It is preferable for the direction to be made well before the trial begins and to ensure that the designated person is available on the day of the witness's testimony so as to provide certainty for the witness.

29B.2 An increased degree of flexibility is appropriate as to who can act as supporter. This can be anyone known to and trusted by the witness who is not a party to the proceedings and has no detailed knowledge of the evidence in the case. The supporter may be a member of the Witness Service but need not be an usher or court official. Someone else may be appropriate.

29B.3 The usher should continue to be available both to assist the witness and the witness supporter, and to ensure that the court's requirements are properly complied with in the live link room.

29B.4 In order to be able to express an informed view about special measures, the witness is entitled to practise speaking using the live link (and to see screens in place). Simply being shown the room and equipment is inadequate for this purpose.

29B.5 If, with the agreement of the court, the witness has chosen not to give evidence by live link but to do so in the court room, it may still be appropriate for a witness supporter to be selected in the same way, and for the supporter to sit alongside the witness while the witness is giving evidence.

CPD V Evidence 29C: VISUALLY RECORDED INTERVIEWS: MEMORY REFRESHING AND WATCHING AT A DIFFERENT TIME FROM THE JURY

29C.1 Witnesses are entitled to refresh their memory from their statement or visually recorded interview. The court should enquire at the PCMH or other case management hearing about arrangements for memory refreshing. The witness's first viewing of the visually recorded interview can be distressing or distracting. It should not be seen for the first time immediately before giving evidence. Depending upon the age and vulnerability of the witness several competing issues have to be considered and it may be that the assistance of the intermediary is needed to establish exactly how memory refreshing should be managed.

29C.2 If the interview is ruled inadmissible, the court must decide what constitutes an acceptable alternative method of memory refreshing.

29C.3 Decisions about how, when and where refreshing should take place should be court-led and made on a case-by-case basis in respect of each witness. General principles to be addressed include:

i. the venue for viewing. The delicate balance between combining the court familiarisation visit and watching the DVD, and having them on two separate occasions, needs to be considered in respect of each witness as combining the two may lead to 'information overload'. Refreshing need not necessarily take place within the court building but may be done, for example, at the police ABE suite.

ii. requiring that any viewing is monitored by a person (usually the officer in the case) who will report to the court about anything said by the witness.

iii. whether it is necessary for the witness to see the DVD more than once for the purpose of refreshing. The court will need to ask the advice of the intermediary, if any, with respect to this.

iv. arrangements, if the witness will not watch the DVD at the same time as the trial bench or judge and jury, for the witness to watch it before attending to be cross examined, (depending upon their ability to retain information this may be the day before).

29C.4 There is no legal requirement that the witness should watch the interview at the same time as the trial bench or jury. Increasingly, this is arranged to occur at a different time, with the advantages that breaks can be taken as needed without disrupting the trial, and cross-examination starts while the witness is fresh. An intermediary may be present to facilitate communication but should not act as the

independent person designated to take a note and report to the court if anything is said. Where the viewing takes place at a different time from that of the jury, the witness is sworn just before cross-examination, asked if he or she has watched the interview and if its contents are 'true' (or other words tailored to the witness's understanding).

CPD V Evidence 29D: WITNESS ANONYMITY ORDERS

29D.1 This direction supplements Part 29 of the Rules, which governs the procedure to be followed on an application for a witness anonymity order. The court's power to make such an order is conferred by the Coroners and Justice Act 2009 (in this section, 'the Act'); section 87 of the Act provides specific relevant powers and obligations.

29D.2 As the Court of Appeal stated in *R v Mayers and Others* [2008] EWCA Crim 2989, [2009] 1 W.L.R. 1915, [2009] 1 Cr. App. R. 30 and emphasised again in *R v Donovan and Kafunda* [2012] EWCA Crim 2749, unreported, 'a witness anonymity order is to be regarded as a special measure of the last practicable resort': Lord Chief Justice, Lord Judge. In making such an application, the prosecution's obligations of disclosure 'go much further than the ordinary duties of disclosure' (*R v Mayers*); reference should be made to the Judicial Protocol on Disclosure, see the Practice Direction accompanying Part 22.

Case management

29D.3 Where such an application is proposed, with the parties' active assistance the court should set a realistic timetable, in accordance with the duties imposed by Rules 3.2 and 3.3. Where possible, the trial judge should determine the application, and any hearing should be attended by the parties' trial advocates.

Service of evidence and disclosure of prosecution material pending an application

29D.4 Where the prosecutor proposes an application for a witness anonymity order, it is not necessary for that application to have been determined before the proposed evidence is served. In most cases, an early indication of what that evidence will be if an order is made will be consistent with a party's duties under Rules 1.2 and 3.3. The prosecutor should serve with the other prosecution evidence a witness statement setting out the proposed evidence, redacted in such a way as to prevent disclosure of the witness' identity, as permitted by section 87(4) of the Act. Likewise the prosecutor should serve with other prosecution material disclosed under the Criminal Procedure and Investigations Act 1996 any such material appertaining to the witness, similarly redacted.

The application

29D.5 An application for a witness anonymity order should be made as early as possible and within the period for which Rule 29.3 provides. The application, and any hearing of it, must comply with the requirements of that rule and with those of Rule 29.19. In accordance with Rules 1.2 and 3.3, the applicant must provide the court with all available information relevant to the considerations to which the Act requires a court to have regard.

Response to the application

29D.6 A party upon whom an application for a witness anonymity order is served must serve a response in accordance with Rule 29.22. That period may be extended or shortened in the court's discretion: Rule 29.5.

29D.7 To avoid the risk of injustice, a respondent, whether the Prosecution or a defendant, must actively assist the court. If not already done, a respondent defendant should serve a defence statement under section 5 or 6 of the Criminal Procedure and Investigations Act 1996, so that the court is fully informed of what is in issue. When a defendant makes an application for a witness anonymity order the prosecutor should consider the continuing duty to disclose material under section 7A of the Criminal Procedure and Investigations Act 1996; therefore a prosecutor's response should include confirmation that that duty has been considered. Great care should be taken to ensure that nothing disclosed contains anything that might reveal the witness' identity. A respondent prosecutor should provide the court with all available information relevant to the considerations to which the Act requires a court to have regard, whether or not that information falls to be disclosed under the 1996 Act.

Determination of the application

29D.8 All parties must have an opportunity to make oral representations to the court on an application for a witness anonymity order: section 87(6) of the Act. However, a hearing may not be needed if none is sought: Rule 29.18(1)(a). Where, for example, the witness is an investigator who is recognisable by the defendant but known only by an assumed name, and there is no likelihood that the witness' credibility will be in issue, then the court may indicate a provisional decision and invite representations within a defined period, usually 14 days, including representations about whether there should be a hearing. In such a case, where the parties do not object the court may make an order without a hearing. Or where the court provisionally considers an application to be misconceived, an applicant may choose to withdraw it without requiring a hearing. Where the court directs a hearing of the application then it should allow adequate time for service of the representations in response.

29D.9 The hearing of an application for a witness anonymity order usually should be in private: Rule 29.18(1)(a). The court has power to hear a party in the absence of a defendant and that defendant's representatives: section 87(7) of the Act and Rule 29.18(1)(b). In the Crown Court, a recording of the proceedings will be made, in accordance with Rule 5.5. The Crown Court officer must treat such a recording in the same way as the recording of an application for a public interest ruling. It must be kept in secure conditions, and the arrangements made by the Crown Court officer for any transcription must impose restrictions that correspond with those under rule 5.5(2).

29D.10 Where confidential supporting information is presented to the court before the last stage of the hearing, the court may prefer not to read that information until that last stage.

29D.11 The court may adjourn the hearing at any stage, and should do so if its duty under rule 3.2 so requires.

29D.12 On a prosecutor's application, the court is likely to be assisted by the attendance of a senior investigator or other person of comparable authority who is familiar with the case.

29D.13 During the last stage of the hearing it is essential that the court test thoroughly the information supplied in confidence in order to satisfy itself that the conditions prescribed by the Act are met. At that stage, if the court concludes that this is the only way in which it can satisfy itself as to a relevant condition or consideration, exceptionally it may invite the applicant to present the proposed witness to be questioned by the court. Any such questioning should be carried out at such a time, and the witness brought to the court in such a way, as to prevent disclosure of his or her identity.

29D.14 The court may ask the Attorney General to appoint special counsel to assist. However, it must be kept in mind that, 'Such an appointment will always be exceptional, never automatic; a course of last and never first resort. It should not be ordered unless and until the trial judge is satisfied that no other course will adequately meet the overriding requirement of fairness to the defendant': *R v H* [2004] UKHL 3, [2004] 2 A.C. 134 (at paragraph 22), [2004] 2 Cr. App. R. 10. Whether to accede to such a request is a matter for the Attorney General, and adequate time should be allowed for the consideration of such a request.

29D.15 The Court of Appeal in *R v Mayers* 'emphasise[d] that all three conditions, A, B and C, must be met before the jurisdiction to make a witness anonymity order arises. Each is mandatory. Each is distinct.' The Court also noted that if there is more than one anonymous witness in a case any link, and the nature of any link, between the witnesses should be investigated: 'questions of possible improper collusion between them, or cross-contamination of one another, should be addressed.'

29D.16 Following a hearing the court should announce its decision on an application for a witness anonymity order in the parties' presence and in public: rule 29.4(2). The court should give such reasons as it is possible to give without revealing the witness' identity. In the Crown Court, the court will be conscious that reasons given in public may be reported and reach the jury. Consequently, the court should ensure that nothing in its decision or its reasons could undermine any warning it may give jurors under section 90(2) of the Act. A record of the reasons must be kept. In the Crown Court, the announcement of those reasons will be recorded.

Order

29D.17 Where the court makes a witness anonymity order, it is essential that the measures to be taken are clearly specified in a written record of that order approved by the court and issued on its behalf. An order made in a magistrates' court must be recorded in the court register, in accordance with rule 5.4.

29D.18 Self-evidently, the written record of the order must not disclose the identity of the witness to whom it applies. However, it is essential that there be maintained some

means of establishing a clear correlation between witness and order, and especially where in the same proceedings witness anonymity orders are made in respect of more than one witness, specifying different measures in respect of each. Careful preservation of the application for the order, including the confidential part, ordinarily will suffice for this purpose.

Discharge or variation of the order

29D.19 Section 91 of the Act allows the court to discharge or vary a witness anonymity order: on application, if there has been a material change of circumstances since the order was made or since any previous variation of it; or on its own initiative. Rule 29.21 allows the parties to apply for the variation of a pre-trial direction where circumstances have changed.

29D.20 The court should keep under review the question of whether the conditions for making an order are met. In addition, consistently with the parties' duties under rules 1.2 and 3.3, it is incumbent on each, and in particular on the applicant for the order, to keep the need for it under review.

29D.21 Where the court considers the discharge or variation of an order, the procedure that it adopts should be appropriate to the circumstances. As a general rule, that procedure should approximate to the procedure for determining an application for an order. The court may need to hear further representations by the applicant for the order in the absence of a respondent defendant and that defendant's representatives.

Retention of confidential material

29D.22 If retained by the court, confidential material must be stored in secure conditions by the court officer. Alternatively, subject to such directions as the court may give, such material may be committed to the safe keeping of the applicant or any other appropriate person in exercise of the powers conferred by rule 29.6. If the material is released to any such person, the court should ensure that it will be available to the court at trial.

Part 30 - [Empty]

Part 31 Restriction on cross-examination by a defendant acting in person

Part 32 International co-operation

Part 33 Expert evidence

Part 34 Hearsay evidence

Part 35 Evidence of bad character

CPD V Evidence 35A: SPENT CONVICTIONS

35A.1 The effect of section 4(1) of the Rehabilitation of Offenders Act 1974 is that a person who has become a rehabilitated person for the purpose of the Act in respect of a conviction (known as a 'spent' conviction) shall be treated for all purposes in law as a person who has not committed, or been charged with or prosecuted for, or convicted of or sentenced for, the offence or offences which were the subject of that conviction.

35A.2 Section 4(1) of the 1974 Act does not apply, however, to evidence given in criminal proceedings: section 7(2)(a). During the trial of a criminal charge, reference to previous convictions (and therefore to spent convictions) can arise in a number of ways. The most common is when a bad character application is made under the Criminal Justice Act 2003. When considering bad character applications under the 2003 Act, regard should always be had to the general principles of the Rehabilitation of Offenders Act 1974.

35A.3 On conviction, the court must be provided with a statement of the defendant's record for the purposes of sentence. The record supplied should contain all previous convictions, but those which are spent should, so far as practicable, be marked as such. No one should refer in open court to a spent conviction without the authority of the judge, which authority should not be given unless the interests of justice so require. When passing sentence the judge should make no reference to a spent conviction unless it is necessary to do so for the purpose of explaining the sentence to be passed.

Part 36 Evidence of a complainant's previous sexual behaviour

VI Trial

Part 37 Trial and sentence in a magistrates' court

CPD VI Trial 37A: ROLE OF THE JUSTICES' CLERK/LEGAL ADVISER

37A.1 The role of the justices' clerk/legal adviser is a unique one, which carries with it independence from direction when undertaking a judicial function and when advising magistrates. These functions must be carried out in accordance with the Bangalore Principles of Judicial Conduct (judicial independence, impartiality, integrity, propriety, ensuring fair treatment and competence and diligence). More specifically, duties must be discharged in accordance with the relevant professional Code of Conduct and the Legal Adviser Competence Framework.

37A.2 A justices' clerk is responsible for:

(a) the legal advice tendered to the justices within the area;

(b) the performance of any of the functions set out below by any member of his staff acting as justices' legal adviser;

(c) ensuring that competent advice is available to justices when the justices' clerk is not personally present in court; and

(d) ensuring that advice given at all stages of proceedings and powers exercised (including those delegated to justices' legal advisers) take into account the court's duty to deal with cases justly and actively to manage the case.

37A.3 Where a person other than the justices' clerk (a justices' legal adviser), who is authorised to do so, performs any of the functions referred to in this direction, he or she will have the same duties, powers and responsibilities as the justices' clerk. The justices' legal adviser may consult the justices' clerk, or other person authorised by the justices' clerk for that purpose, before tendering advice to the bench. If the justices' clerk or that person gives any advice directly to the bench, he or she should give the parties or their advocates an opportunity of repeating any relevant submissions, prior to the advice being given.

37A.4 When exercising judicial powers, a justices' clerk or legal adviser is acting in exactly the same capacity as a magistrate. The justices' clerk may delegate powers to a justices' legal adviser in accordance with the relevant statutory authority. The scheme of delegation must be clear and in writing, so that all justices' legal advisers are certain of the extent of their powers. Once a power is delegated, judicial discretion in an individual case lies with the justices' legal adviser exercising the power. When exercise of a power does not require the consent of the parties, a justices' clerk or legal adviser may deal with and decide a contested issue or may refer that issue to the court.

37A.5 It shall be the responsibility of the justices' clerk or legal adviser to provide the justices with any advice they require to perform their functions justly, whether or not the advice has been requested, on:

(a) questions of law;

(b) questions of mixed law and fact;

(c) matters of practice and procedure;

(d) the process to be followed at sentence and the matters to be taken into account, together with the range of penalties and ancillary orders available, in accordance with the relevant sentencing guidelines;

(e) any relevant decisions of the superior courts or other guidelines;

(f) the appropriate decision-making structure to be applied in any given case; and

(g) other issues relevant to the matter before the court.

37A.6 In addition to advising the justices, it shall be the justices' legal adviser's responsibility to assist the court, where appropriate, as to the formulation of reasons and the recording of those reasons.

37A.7 The justices' legal adviser has a duty to assist an unrepresented defendant, see Rule 9.4(3)(a), in particular when the court is making a decision on allocation, bail, at trial and on sentence.

37A.8 Where the court must determine allocation, the legal adviser may deal with any aspect of the allocation hearing save for the decision on allocation, indication of sentence and sentence.

37A.9 When a defendant acting in person indicates a guilty plea, the legal adviser must explain the procedure and inform the defendant of their right to address the court on the facts and to provide details of their personal circumstances in order that the court can decide the appropriate sentence.

37A.10 When a defendant indicates a not guilty plea but has not completed the relevant sections of the Magistrates' Courts Trial Preparation Form, the legal adviser must either ensure that the Form is completed or, in appropriate cases, assist the court to obtain and record the essential information on the form.

37A.11 Immediately prior to the commencement of a trial, the legal adviser must summarise for the court the agreed and disputed issues, together with the way in which the parties propose to present their cases. If this is done by way of pre-court briefing, it should be confirmed in court or agreed with the parties.

37A.12 A justices' clerk or legal adviser must not play any part in making findings of fact, but may assist the bench by reminding them of the evidence, using any notes of the proceedings for this purpose, and clarifying the issues which are agreed and those which are to be determined.

37A.13 A justices' clerk or legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. A legal adviser has a duty to ensure that every case is conducted justly.

37A.14 When advising the justices, the justices' clerk or legal adviser, whether or not previously in court, should:

(a) ensure that he is aware of the relevant facts; and

(b) provide the parties with an opportunity to respond to any advice given.

37A.15 At any time, justices are entitled to receive advice to assist them in discharging their responsibilities. If they are in any doubt as to the evidence which has been given,

they should seek the aid of their legal adviser, referring to his notes as appropriate. This should ordinarily be done in open court. Where the justices request their adviser to join them in the retiring room, this request should be made in the presence of the parties in court. Any legal advice given to the justices other than in open court should be clearly stated to be provisional; and the adviser should subsequently repeat the substance of the advice in open court and give the parties the opportunity to make any representations they wish on that provisional advice. The legal adviser should then state in open court whether the provisional advice is confirmed or, if it is varied, the nature of the variation.

37A.16 The legal adviser is under a duty to assist unrepresented parties, whether defendants or not, to present their case, but must do so without appearing to become an advocate for the party concerned. The legal adviser should also ensure that members of the court are aware of obligations under the Victims' Code.

37A.17 The role of legal advisers in fine default proceedings, or any other proceedings for the enforcement of financial orders, obligations or penalties, is to assist the court. They must not act in an adversarial or partisan manner, such as by attempting to establish wilful refusal or neglect or any other type of culpable behaviour, to offer an opinion on the facts, or to urge a particular course of action upon the justices. The expectation is that a legal adviser will ask questions of the defaulter to elicit information which the justices will require to make an adjudication, such as the explanation for the default. A legal adviser may also advise the justices as to the options open to them in dealing with the case.

37A.18 The performance of a legal adviser is subject to regular appraisal. For that purpose the appraiser may be present in the justices' retiring room. The content of the appraisal is confidential, but the fact that an appraisal has taken place, and the presence of the appraiser in the retiring room, should be briefly explained in open court.

Part 38 - [Empty]

Part 39 Trial on indictment

CPD VI Trial 39A: JURIES: INTRODUCTION

39A.1 Jury service is an important public duty which individual members of the public are chosen at random to undertake. As the Court has acknowledged: "Jury service is not easy; it never has been. It involves a major civic responsibility" (*R v Thompson* [2010] EWCA Crim 1623, [9] per Lord Judge CJ, [2011] 1 W.L.R. 200, [2010] 2 Cr. App. R. 27).

Provision of information to prospective jurors

39A.2 HMCTS provide every person summoned as a juror with information about the role and responsibilities of a juror. Prospective jurors are provided with a

pamphlet, "Your Guide to Jury Service", and may also view the film "Your Role as a Juror" online at anytime on the Ministry of Justice YouTube site www.youtube.com/watch?v=JP7slp-X9Pc There is also information at https://www.gov.uk/jury-service/overview

CPD VI Trial 39B: JURIES: PRELIMINARY MATTERS ARISING BEFORE JURY SERVICE COMMENCES

39B.1 The effect of section 321 of the Criminal Justice Act 2003 was to remove certain categories of persons from those previously ineligible for jury service (the judiciary and others concerned with the administration of justice) and certain other categories ceased to be eligible for excusal as of right, (such as members of Parliament and medical professionals). The normal presumption is that everyone, unless ineligible or disqualified, will be required to serve when summoned to do so.

Excusal and deferral

39B.2 The jury summoning officer is empowered to defer or excuse individuals in appropriate circumstances and in accordance with the HMCTS *Guidance for summoning officers when considering deferral and excusal applications* (2009): http://www.official-documents.gov.uk/document/other/9780108508400/9780108508400.pdf

Appeals from officer's refusal to excuse or postpone jury service

39B.3 Rule 39.2 governs the procedure for a person's appeal against a summoning officer's decision in relation to excusal or deferral of jury service.

Provision of information at court

39B.4 The court officer is expected to provide relevant further information to jurors on their arrival in the court centre.

CPD VI Trial 39C: JURIES: ELIGIBILITY

English language ability

39C.1 Under the Juries Act 1974 section 10, a person summoned for jury service who applies for excusal on the grounds of insufficient understanding of English may, where necessary, be brought before the judge.

39C.2 The court may exercise its power to excuse any person from jury service for lack of capacity to act effectively as a juror because of an insufficient understanding of English.

39C.3 The judge has the discretion to stand down jurors who are not competent to serve by reason of a personal disability: *R v Mason* [1981] QB 881, (1980) 71 Cr. App. R. 157; *R v Jalil* [2008] EWCA Crim 2910, [2009] 2 Cr. App. R. (S.) 40.

Jurors with professional and public service commitments

39C.4 The legislative change in the Criminal Justice Act 2003 means that more individuals are eligible to serve as jurors, including those previously excused as of right or ineligible. Judges need to be vigilant to the need to exercise their discretion to adjourn a trial, excuse or discharge a juror should the need arise.

39C.5 Whether or not an application has already been made to the jury summoning officer for deferral or excusal, it is also open to the person summoned to apply to the court to be excused. Such applications must be considered with common sense and according to the interests of justice. An explanation should be required for an application being much later than necessary.

Serving police officers, prison officers or employees of prosecuting agencies

39C.6 A judge should always be made aware at the stage of jury selection if any juror in waiting is in these categories. The juror summons warns jurors in these categories that they will need to alert court staff.

39C.7 In the case of police officers an inquiry by the judge will have to be made to assess whether a police officer may serve as a juror. Regard should be had to: whether evidence from the police is in dispute in the case and the extent to which that dispute involves allegations made against the police; whether the potential juror knows or has worked with the officers involved in the case; whether the potential juror has served or continues to serve in the same police units within the force as those dealing with the investigation of the case or is likely to have a shared local service background with police witnesses in a trial.

39C.8 In the case of a serving prison officer summoned to a court, the judge will need to inquire whether the individual is employed at a prison linked to that court or is likely to have special knowledge of any person involved in a trial.

39C.9 The judge will need to ensure that employees of prosecuting authorities do not serve on a trial prosecuted by the prosecuting authority by which they are employed. They can serve on a trial prosecuted by another prosecuting authority: *R v Abdroikov* [2007] UKHL 37, [2007] 1 W.L.R. 2679, [2008] 1 Cr. App. R. 21; *Hanif v UK* [2011] ECHR 2247, (2012) 55 E.H.R.R. 16; *R v L* [2011] EWCA Crim 65, [2011] 1 Cr. App. R. 27. Similarly, a serving police officer can serve where there is no particular link between the court and the station where the police officer serves.

39C.10 Potential jurors falling into these categories should be excused from jury service unless there is a suitable alternative court/trial to which they can be transferred.

CPD VI Trial 39D: JURIES: PRECAUTIONARY MEASURES BEFORE SWEARING

39D.1 There should be a consultation with the advocates as to the questions, if any, it may be appropriate to ask potential jurors. Topics to be considered include:

a. the availability of jurors for the duration of a trial that is likely to run beyond the usual period for which jurors are summoned;

b. whether any juror knows the defendant or parties to the case;

c. whether potential jurors are so familiar with any locations that feature in the case that they may have, or come to have, access to information not in evidence;

d. in cases where there has been any significant local or national publicity, whether any questions should be asked of potential jurors.

39D.2 Judges should however exercise caution. At common law a judge has a residual discretion to discharge a particular juror who ought not to be serving, but this discretion can only be exercised to prevent an individual juror who is not competent from serving. It does not include a discretion to discharge a jury drawn from particular sections of the community or otherwise to influence the overall composition of the jury. However, if there is a risk that there is widespread local knowledge of the defendant or a witness in a particular case, the judge may, after hearing submissions from the advocates, decide to exclude jurors from particular areas to avoid the risk of jurors having or acquiring personal knowledge of the defendant or a witness.

Length of trial

39D.3 Where the length of the trial is estimated to be significantly longer than the normal period of jury service, it is good practice for the trial judge to enquire whether the potential jurors on the jury panel foresee any difficulties with the length and if the judge is satisfied that the jurors' concerns are justified, he may say that they are not required for that particular jury. This does not mean that the judge must excuse the juror from sitting at that court altogether, as it may well be possible for the juror to sit on a shorter trial at the same court.

Juror with potential connection to the case or parties

39D.4 Where a juror appears on a jury panel, it will be appropriate for a judge to excuse the juror from that particular case where the potential juror is personally concerned with the facts of the particular case, or is closely connected with a prospective witness. Judges need to exercise due caution as noted above.

CPD VI Trial 39E: JURIES: SWEARING IN JURORS

Swearing Jury for trial

39E.1 All jurors shall be sworn or affirm. All jurors shall take the oath or affirmation in open court in the presence of one another. If, as a result of the juror's delivery of the oath or affirmation, a judge has concerns that a juror has such difficulties with language comprehension or reading ability that might affect that juror's capacity to undertake his or her duties, bearing in mind the likely evidence in the trial, the judge should make appropriate inquiry of that juror.

Form of oath or affirmation

39E.2 Each juror should have the opportunity to indicate to the court the Holy Book on which he or she wishes to swear. The precise wording will depend on his or her faith as indicated to the court.

39E.3 Any person who prefers to affirm shall be permitted to make a solemn affirmation instead. The wording of the affirmation is: 'I do solemnly, sincerely and truly declare and affirm that I will faithfully try the defendant and give a true verdict according to the evidence'.

CPD VI Trial 39F: JURIES: ENSURING AN EFFECTIVE JURY PANEL

Adequacy of numbers

39F.1 By section 6 of the Juries Act 1974, if it appears to the court that a jury to try any issue before the court will be, or probably will be, incomplete, the court may, if the court thinks fit, require any persons who are in, or in the vicinity of, the court, to be summoned (without any written notice) for jury service up to the number needed (after allowing for any who may not be qualified under section 1 of the Act, and for excusals and challenges) to make up a full jury.

CPD VI Trial 39G: JURIES: PRELIMINARY INSTRUCTIONS TO JURORS

39G.1 After the jury has been sworn and the defendant has been put in charge the judge will want to give directions to the jury on a number of matters.

39G.2 Jurors can be expected to follow the instructions diligently. As the Privy Council stated in *Taylor* [2013] UKPC 8, [2013] 1 W.L.R. 1144:

> The assumption must be that the jury understood and followed the direction that they were given: ... the experience of trial judges is that juries perform their duty according to law. ...[T]he law proceeds on the footing that the jury, acting in accordance with the instructions given to them by the trial judge, will render a true verdict in accordance with the evidence. To conclude otherwise would be to underrate the integrity of the system of trial by jury and the effect on the jury of the instructions by the trial judge.

At the start of the trial

39G.3 Trial judges should instruct the jury on general matters which will include the time estimate for the trial and normal sitting hours. The jury will always need clear guidance on the following:

i. The need to try the case only on the evidence and remain faithful to their oath or affirmation;

ii. The prohibition on internet searches for matters related to the trial, issues arising or the parties;

iii. The importance of not discussing any aspect of the case with anyone outside their own number or allowing anyone to talk to

them about it, whether directly, by telephone, through internet facilities such as Facebook or Twitter or in any other way;

iv. The importance of taking no account of any media reports about the case;

v. The collective responsibility of the jury. As the Lord Chief Justice made clear in *R v Thompson and Others* [2010] EWCA Crim 1623, [2011] 1 W.L.R. 200, [2010] 2 Cr. App. R. 27:

> [T]here is a collective responsibility for ensuring that the conduct of each member is consistent with the jury oath and that the directions of the trial judge about the discharge of their responsibilities are followed…. The collective responsibility of the jury for its own conduct must be regarded as an integral part of the trial itself.

vi. The need to bring any concerns, including concerns about the conduct of other jurors, to the attention of the judge at the time, and not to wait until the case is concluded. The point should be made that, unless that is done while the case is continuing, it may not be possible to deal with the problem at all.

Subsequent reminder of the jury instructions

39G.4 Judges should consider reminding jurors of these instructions as appropriate at the end of each day and in particular when they separate after retirement.

CPD VI Trial 39H: JURIES: DISCHARGE OF A JUROR FOR PERSONAL REASONS

39H.1 Where a juror unexpectedly finds him or herself in difficult professional or personal circumstances during the course of the trial, the juror should be encouraged to raise such problems with the trial judge. This might apply, for example, to a parent whose childcare arrangements unexpectedly fail, or a worker who is engaged in the provision of services the need for which can be critical, or a Member of Parliament who has deferred their jury service to an apparently more convenient time, but is unexpectedly called back to work for a very important reason. Such difficulties would normally be raised through a jury note in the normal manner.

39H.2 In such circumstances, the judge must exercise his or her discretion according to the interests of justice and the requirements of each individual case. The judge must decide for him or herself whether the juror has presented a sufficient reason to interfere with the course of the trial. If the juror has presented a sufficient reason, in longer trials it may well be possible to adjourn for a short period in order to allow the juror to overcome the difficulty.

39H.3 In shorter cases, it may be more appropriate to discharge the juror and to continue the trial with a reduced number of jurors. The power to do this is implicit in section 16(1) of the Juries Act 1974. In unusual cases (such as an unexpected emergency arising overnight) a juror need not be discharged in open court. The good administration of justice depends on the co-operation of jurors, who perform an essential public service. All such applications should be dealt with sensitively and sympathetically and the trial judge should always seek to meet the interests of justice without unduly inconveniencing any juror.

CPD VI Trial 39J: JURIES: VIEWS

39J.1 In each case in which it is necessary for the jury to view a location, the judge should produce ground rules for the view, after discussion with the advocates. The rules should contain details of what the jury will be shown and in what order and who, if anyone, will be permitted to speak and what will be said. The rules should also make provision for the jury to ask questions and receive a response from the judge, following submissions from the advocates, while the view is taking place.

CPD VI Trial 39K: JURIES: DIRECTIONS TO JURY BEFORE RETIREMENT

39K.1 At the conclusion of the summing up, a number of directions are required. In particular it is important that judges direct the jury:

i. That their verdict must be unanimous in respect of each count and each defendant.

ii. Not to think about "majority verdicts" unless and until given further directions.

iii. That they will need to select one of their number to chair their discussions and speak on their behalf.

CPD VI Trial 39L: JURIES: JURY ACCESS TO EXHIBITS AND EVIDENCE IN RETIREMENT

39L.1 At the end of the summing up it is also important that the judge informs the jury that any exhibits they wish to have will be made available to them.

39L.2 Judges should invite submissions from the advocates as to what material the jury should retire with and what material before them should be removed, such as the transcript of an ABE interview (which should usually be removed from the jury as soon as the recording has been played.)

39L.3 Judges will also need to inform the jury of the opportunity to view certain audio, DVD or CCTV evidence that has been played (excluding, for example ABE interviews). If possible, it may be appropriate for the jury to be able to view any such material in the jury room alone, such as on a sterile laptop, so that they can

discuss it freely; this will be a matter for the judge's discretion, following discussion with counsel.

CPD VI Trial 39M: JURIES: JURY IRREGULARITIES

39M.1 This section consolidates the protocol issued by the President of the Queen's Bench Division in November 2012: Protocol in relation to Jury Irregularities at the Crown Court.

39M.2 A jury irregularity is anything that may prevent a juror, or the whole jury, from remaining faithful to their oath or affirmation as jurors to 'faithfully try the defendant and give a true verdict according to the evidence.' Anything that compromises the jury's independence, or introduces into the jury's deliberations material or considerations extraneous to the evidence in the case, may impact on the jurors' ability to remain faithful to their oath or affirmation.

During the course of the trial

39M.3 Any irregularity relating to the jury should be drawn to the attention of the trial judge in the absence of the jury as soon as it is known.

39M.4 Irregularities take many forms: some may clearly appear to be contempt by a juror, for example, searching for material about the defendant on the internet; others may appear to be an attempt to intimidate or suborn a juror; on other occasions, for example, where there has been contact between a juror and a defendant, it may not be clear whether it may be a contempt or an attempt at intimidation. The judge may also be made aware of friction between individual jurors.

39M.5 Difficult situations do arise and, although the trial process must not be delayed unduly, the trial judge may wish to consult with the Registrar of Criminal Appeals. Contact details for the Registrar and the Criminal Appeal Office are given at the end of this section.

39M.6 When an irregularity is drawn to the attention of the trial judge, the judge should consider whether the juror(s) concerned should be isolated from the rest of the jury if that has not already been done by the usher. If it appears that a juror has improperly obtained information, consideration should be given as to the risk that the information has already been shared with other members of the jury or that the information could be shared if the jury remain together.

39M.7 The judge should consult with the advocates and invite submissions. This should be in open court in the presence of the defendant(s) unless there is good reason not to do so.

39M.8 The trial judge should try to establish the basic facts of what has occurred. This may involve questioning individually the juror(s) involved. Unless there is good reason, again this should be in open court in the presence of the defendant(s). However, if there is suspicion about the defendant's conduct in the irregularity then the hearing should take place with all parties represented, but in the

defendant's absence. The hearing should be held in court sitting in chambers, not in the judge's room. If there is any suspicion of tampering, the defendant, if not already in custody, ought to be taken into custody.

39M.9 The judge's inquiries should be directed towards ascertaining whether the juror(s) can remain faithful to their oath or affirmation; the trial judge should not inquire into the deliberations of the jury. The inquiry should only be to ascertain what has occurred and what steps should be taken next. It may be appropriate for the judge to ask the juror(s) whether they feel able to continue and remain faithful to their oath or affirmation.

39M.10 In the light of the basic facts as they appear to be, the trial judge may invite further submissions from the advocates, including on what should be said to the jurors, and take time to reflect on the appropriate course of action. The judge may consider the stage the trial has reached and in cases of potential bias whether a fair minded and informed observer would conclude that there was a real possibility that the juror or jury would be biased. Judges should be alert to attempts by defendants or others to obstruct or thwart the trial process.

39M.11 In relation to the conduct of the trial, the trial judge may:

i. Take no action and continue the trial. If so, the judge should consider giving some explanation to the jurors to reassure them that nothing untoward has happened that need concern them.

ii. Continue the trial but, if appropriate, give a reminder to the jury, tailored to the requirements of the case, that their verdict is a decision of the whole jury as a body and that they should give and take and try to work together. It is, in every case, essential that no undue pressure is exerted on the jury.

iii. Discharge the juror(s) concerned and continue the trial if sufficient jurors remain. The minimum number required to continue is nine: Juries Act 1974, section 16(1). Consideration must be given as to what to say to the remaining jury members when one or more have been discharged and to the juror(s) on discharge. The juror(s) must be warned not to discuss the circumstances with anyone and it may be necessary to discharge the juror(s) from current jury service.

iv. Discharge the whole jury and re-list the trial. Again the jury should be warned not to discuss the circumstances with anyone. Consideration should be given to discharging them from current jury service. If the jury has been discharged and there is a danger of jury tampering in the new trial, the Crown may make an application under section 44 of the Criminal Justice Act 2003 at a preliminary hearing for a trial without a jury if jury protection measures would be insufficient.

v. If the judge is satisfied that jury tampering has taken place, discharge the jury and continue the trial without a jury: section 46(3) of the Criminal Justice Act 2003, or discharge the jury and order that a new trial take place without a jury: section 46(5) of the Criminal Justice Act 2003.

39M.12 Contempt by jurors should generally be dealt with by the Attorney General; however it may be appropriate for the trial judge to deal with a very minor and clear contempt in the face of the court admitted by the juror. The procedure in such a case is provided for in Section 2 of Part 62 of the Criminal Procedure Rules. If, after the preliminary inquiry, it appears to the trial judge that someone may be in contempt and it is not appropriate for the trial judge to deal with it, or that a criminal offence may have been committed, an investigation by the police may be appropriate to clarify the factual position or to gather evidence.

39M.13 Before the name(s) and address(es) of any juror(s) are provided to the police or the police are requested to take any action, the approval of the Court of Appeal (Criminal Division) (the 'CA(CD)') to the release of information must be obtained. The court manager, on behalf of the trial judge, should contact the Registrar of Criminal Appeals setting out the position neutrally and seeking the approval of the CA(CD) to release the name(s) and address(es) of the juror(s) to the police. The initial approach may be by telephone, but the information must be provided in writing; e-mail is acceptable.

39M.14 The Registrar will put the application before the Vice-President of the CA(CD) or a judge of the CA(CD) nominated by the Vice-President to consider approval. The Court of Appeal judge will consider the application and, if approval is granted, may also give directions as to the scope of the investigation. It may be that any investigation is made in stages. The Registrar will also inform the Attorney General's Office, who may allocate a lawyer and assist the police in the direction of the investigation.

39M.15 Where there is to be an investigation by the police, it will be necessary to act expeditiously to obtain witness statements whilst memories are still fresh. Such statements may be required for criminal or contempt proceedings. Police investigating the matter must pay scrupulous regard to s.8 Contempt of Court Act 1981.

39M.16 When the investigation is complete, the police should report to the Attorney General through the allocated AGO lawyer. If it appears that a criminal offence may have been committed, the Attorney General will hand the file to the Crown Prosecution Service; if a contempt may have taken place, the Attorney General will decide whether or not to instigate proceedings in the Divisional Court.

39M.17 In the event that such an incident does occur, trial judges should have regard to the remarks of Lord Hope in *R v Connors and Mirza* [2004] UKHL 2 at [127] and [128], [2004] 1 A.C. 1118, [2004] 2 Cr. App. R. 8 and consider the desirability of preparing a statement that could be used in connection with any appeal arising from the incident to the CA(CD). Members of the CA(CD) should also remind

themselves of the power to request the Crown Court officer to provide the Registrar with any document, object or information: Rule 65.8(1) of the Criminal Procedure Rules.

After verdicts have been returned

39M.18 A trial judge has no jurisdiction in relation to enquiries about jury irregularities that come to light after the end of the trial. A trial will be considered to have concluded for these purposes when a jury has delivered all verdicts or has been discharged from giving all verdicts on all defendants in the trial. In *R v Thompson and others* [2010] EWCA Crim 1623, [2011] 1 W.L.R. 200, [2010] 2 Cr. App. R. 27, the Lord Chief Justice, Lord Judge said:

> Much more difficult problems arise when after the verdict has been returned, attention is drawn to alleged irregularities. This may take the form of a complaint from a defendant, or his solicitors, or in a very few cases it may emerge from one or more jurors, or indeed from information revealed by the jury bailiff. It is then beyond the jurisdiction of the trial judge to intervene. Responsibility for investigating any irregularity must be assumed by this court. In performing its responsibilities, it is bound to apply the principle that the deliberations of the jury are confidential. Except with the authority of the trial judge during the trial, or this court after the verdict, inquiries into jury deliberations are "forbidden territory" (per Gage LJ in *R v Adams* [2007] EWCA Crim 1, [2007] 1 Cr. App. R. 34).

39M.19 If information about a jury irregularity comes to light during an adjournment after verdict but before sentence, then the trial judge should be considered functus officio in relation to the jury matter, not least because the jury will have been discharged. The trial judge should inform the Registrar of Criminal Appeals about the information. Unless there is a good reason not to do so, the trial judge should proceed to sentence.

39M.20 If at any stage after trial, a juror contacts the trial judge about the trial, that communication should be referred to the Registrar of Criminal Appeals to consider what steps may be appropriate. The Registrar may seek the direction of the Vice-President of the CA(CD) or a judge of the CA(CD) nominated by the Vice-President.

39M.21 If the communication suggests any issue of contempt or criminal offence, the Registrar will inform the Attorney General. If it appears to suggest a possible ground of appeal, the defendant's legal representatives will be informed. Where it raises no issues of legal significance (for example, a general complaint about the verdict from a dissenting juror or expressions of doubt or second thoughts), the Registrar will respond to the communication explaining that no action is required.

39M.22 If the prosecution become aware of an irregularity which might form a basis for an appeal then 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, (2004) 148 SJ LB 821.

39M.23 If the defence become aware of an irregularity which would found an arguable ground of appeal, whether they are informed directly or via the prosecution or the Registrar of Criminal Appeals, they may wish to lodge a notice and grounds of appeal. The defence should be mindful of the provisions of s.8 Contempt of Court Act 1981.

39M.24 If an application for leave to appeal is received with grounds relating to a jury irregularity then the Registrar may refer the case to the Full Court to consider whether the Court would wish to direct the Criminal Cases Review Commission (C.C.R.C.) to conduct an investigation into the irregularity under s.23A of the Criminal Appeal Act 1968 and s.5(1) of the Criminal Appeal Act 1995.

39M.25 An investigation may be directed before or after leave is granted: s.23A and s.23A(1)(aa) Criminal Appeal Act 1968.

39M.26 If the Court directs that an investigation should take place, directions will be given as to the scope of the investigation. The C.C.R.C. will report back to the Court. Copies of the report or other appropriate information will be provided to the parties and the Court will either refuse leave or grant leave and subsequently hear the appeal.

Contact details

Master Egan QC
The Registrar of Criminal Appeals
Royal Courts of Justice
Strand
London
WC2A 2LL

Secretary to the Registrar:
Penny Donnelly
Tel: 0207 947 6103
E-mail: penny.donnelly@hmcts.x.gsi.gov.uk

Criminal Appeal Office, General Office
Tel: 0207 947 6011
E-mail: criminalappealoffice.generaloffice@hmcts.x.gsi.gov.uk

CPD VI Trial 39N: OPEN JUSTICE

39N.1 There must be freedom of access between advocate and judge. Any discussion must, however, be between the judge and the advocates on both sides. If an advocate is instructed by a solicitor who is in court, he or she, too, should be allowed to attend the discussion. This freedom of access is important because

there may be matters calling for communication or discussion of such a nature that the advocate cannot, in the client's interest, mention them in open court, e.g. the advocate, by way of mitigation, may wish to tell the judge that reliable medical evidence shows that the defendant is suffering from a terminal illness and may not have long to live. It is imperative that, so far as possible, justice must be administered in open court. Advocates should, therefore, only ask to see the judge when it is felt to be really necessary. The judge must be careful only to treat such communications as private where, in the interests of justice, this is necessary. Where any such discussion takes place it should be recorded, preferably by audio recording.

CPD VI Trial 39P: DEFENDANT'S RIGHT TO GIVE OR NOT TO GIVE EVIDENCE

39P.1 At the conclusion of the evidence for the prosecution, section 35(2) of the Criminal Justice and Public Order Act 1994 requires the court to satisfy itself that the defendant is aware that the stage has been reached at which evidence can be given for the defence and that the defendant's failure to give evidence, or if he does so his failure to answer questions, without a good reason, may lead to inferences being drawn against him.

If the defendant is legally represented

39P.2 After the close of the prosecution case, if the defendant's representative requests a brief adjournment to advise his client on this issue the request should, ordinarily, be granted. When appropriate the judge should, in the presence of the jury, inquire of the representative in these terms:

> *'Have you advised your client that the stage has now been reached at which he may give evidence and, if he chooses not to do so or, having been sworn, without good cause refuses to answer any question, the jury may draw such inferences as appear proper from his failure to do so ?'*

39P.3 If the representative replies to the judge that the defendant has been so advised, then the case shall proceed. If counsel replies that the defendant has not been so advised, then the judge shall direct the representative to advise his client of the consequences and should adjourn briefly for this purpose, before proceeding further.

If the defendant is not legally represented

39P.4 If the defendant is not represented, the judge shall, at the conclusion of the evidence for the prosecution, in the absence of the jury, indicate what he will say to him in the presence of the jury and ask if he understands and whether he would like a brief adjournment to consider his position.

39P.5 When appropriate, and in the presence of the jury, the judge should say to the defendant:

> *'You have heard the evidence against you. Now is the time for you to make your defence. You may give evidence on oath, and be cross-examined like*

any other witness. If you do not give evidence or, having been sworn, without good cause refuse to answer any question, the jury may draw such inferences as appear proper. That means they may hold it against you. You may also call any witness or witnesses whom you have arranged to attend court or lead any agreed evidence. Afterwards you may also, if you wish, address the jury. But you cannot at that stage give evidence. Do you now intend to give evidence?'

CPD VI Trial 39Q: MAJORITY VERDICTS

39Q.1 It is very important that all those trying indictable offences should, so far as possible, adopt a uniform practice when complying with section 17 of the Juries Act 1974, both in directing the jury in summing-up and also in receiving the verdict or giving further directions after retirement. So far as the summing-up is concerned, it is inadvisable for the judge, and indeed for advocates, to attempt an explanation of the section for fear that the jury will be confused.
Before the jury retires, however, the judge should direct the jury in some such words as the following:
"As you may know, the law permits me, in certain circumstances, to accept a verdict which is not the verdict of you all. Those circumstances have not as yet arisen, so that when you retire I must ask you to reach a verdict upon which each one of you is agreed. Should, however, the time come when it is possible for me to accept a majority verdict, I will give you a further direction."

39Q.2 Thereafter, the practice should be as follows:
Should the jury return before two hours and ten minutes has elapsed since the last member of the jury left the jury box to go to the jury room (or such longer time as the judge thinks reasonable) (see section 17(4)), they should be asked:

(a) "Have you reached a verdict upon which you are all agreed? Please answer 'Yes' or 'No'. ";
(b) (i) If unanimous, "What is your verdict?";
(ii) If not unanimous, the jury should be sent out again for further deliberation, with a further direction to arrive if possible at a unanimous verdict.

39Q.3 Should the jury return (whether for the first time or subsequently) or be sent for after the two hours and ten minutes (or the longer period) has elapsed, questions (a) and (b)(i) in the paragraph above should be put to them and, if it appears that they are not unanimous, they should be asked to retire once more and told they should continue to endeavour to reach a unanimous verdict but that, if they cannot, the judge will accept a majority verdict as in section 17(1).

39Q.4 When the jury finally return, they should be asked:

(a) "Have at least ten (or nine as the case may be) of you agreed on your verdict?";
(b) If "Yes", "What is your verdict? Please only answer 'Guilty' or 'Not Guilty'. ";
(c) (i) If "Not Guilty", accept the verdict without more ado;

(ii) If “Guilty”, “Is that the verdict of you all, or by a majority?”;

(d) If “Guilty” by a majority, “How many of you agreed to the verdict and how many dissented?”

39Q.5 At whatever stage the jury return, before question (a) is asked, the senior officer of the court present shall state in open court, for each period when the jury was out of court for the purpose of considering their verdict(s), the time at which the last member of the jury left the jury box to go to the jury room and the time of their return to the jury box; and will additionally state in open court the total of such periods.

39Q.6 The reason why section 17(3) is confined to a majority verdict of “Guilty”, and for the somewhat complicated procedure set out above, is to prevent it being known that a verdict of “Not Guilty” is a majority verdict. If the final direction continues to require the jury to arrive, if possible, at a unanimous verdict and the verdict is received as specified, it will not be known for certain that the acquittal is not unanimous.

39Q.7 Where there are several counts (or alternative verdicts) left to the jury the above practice will, of course, need to be adapted to the circumstances. The procedure will have to be repeated in respect of each count (or alternative verdict), the verdict being accepted in those cases where the jury are unanimous and the further direction being given in cases in which they are not unanimous.

39Q.8 Should the jury in the end be unable to agree on a verdict by the required majority, the judge in his discretion will either ask them to deliberate further, or discharge them.

39Q.9 Section 17 will, of course, apply also to verdicts other than “Guilty” or “Not Guilty”, e.g. to special verdicts under the Criminal Procedure (Insanity) Act 1964, following a finding by the judge that the defendant is unfit to be tried, and special verdicts on findings of fact. Accordingly, in such cases the questions to jurors will have to be suitably adjusted.

Part 40 Tainted acquittals

Part 41 Retrial following acquittal for serious offence

VII Sentencing

CPD VII Sentencing A: PLEAS OF GUILTY IN THE CROWN COURT

A.1 Prosecutors and Prosecution Advocates should be familiar with and follow the Attorney-General’s Guidelines on the Acceptance of Pleas and the Prosecutor’s Role in the Sentencing Exercise.

CPD VII Sentencing B: DETERMINING THE FACTUAL BASIS OF SENTENCE

Where a guilty plea is offered to less than the whole indictment and the prosecution is minded to accept pleas tendered to some counts or to lesser alternative counts.

B.1 In some cases, defendants wishing to plead guilty will simply plead guilty to all charges on the basis of the facts as alleged and opened by the prosecution, with no dispute as to the factual basis or the extent of offending. Alternatively a defendant may plead guilty to some of the charges brought; in such a case, the judge will consider whether that plea represents a proper plea on the basis of the facts set out by the papers.

B.2 Where the prosecution advocate is considering whether to accept a plea to a lesser charge, the advocate may invite the judge to approve the proposed course of action. In such circumstances, the advocate must abide by the decision of the judge.

B.3 If the prosecution advocate does not invite the judge to approve the acceptance by the prosecution of a lesser charge, it is open to the judge to express his or her dissent with the course proposed and invite the advocate to reconsider the matter with those instructing him or her.

B.4 In any proceedings where the judge is of the opinion that the course proposed by the advocate may lead to serious injustice, the proceedings may be adjourned to allow the following procedure to be followed:

(a) as a preliminary step, the prosecution advocate must discuss the judge's observations with the Chief Crown Prosecutor or the senior prosecutor of the relevant prosecuting authority as appropriate, in an attempt to resolve the issue;

(b) where the issue remains unresolved, the Director of Public Prosecutions or the Director of the relevant prosecuting authority should be consulted;

(c) in extreme circumstances the judge may decline to proceed with the case until the prosecuting authority has consulted with the Attorney General, as may be appropriate.

B.5 Prior to entering a plea of guilty, a defendant may seek an indication of sentence under the procedure set out in *R v Goodyear* [2005] EWCA Crim 888, [2005] 1 W.L.R. 2532, [2005] 2 Cr. App. R. 20; see below.

Where a guilty plea is offered on a limited basis

B.6 A defendant may put forward a plea of guilty without accepting all of the facts as alleged by the prosecution. The basis of plea offered may seek to limit the facts or the extent of the offending for which the defendant is to be sentenced. Depending on the view taken by the prosecution, and the content of the offered basis, the case will fall into one of the following categories:

(a) a plea of guilty upon a basis of plea agreed by the prosecution and defence;

(b) a plea of guilty on a basis signed by the defendant but in respect of which there is no or only partial agreement by the prosecution;

(c) a plea of guilty on a basis that contains within it matters that are purely mitigation and which do not amount to a contradiction of the prosecution case; or

(d) in cases involving serious or complex fraud, a plea of guilty upon a basis of plea agreed by the prosecution and defence accompanied by joint submissions as to sentence.

(a) A plea of guilty upon a basis of plea agreed by the prosecution and defence

B.7 The prosecution may reach an agreement with the defendant as to the factual basis on which the defendant will plead guilty, often known as an "agreed basis of plea". It is always subject to the approval of the court, which will consider whether it adequately and appropriately reflects the evidence as disclosed on the papers, whether it is fair and whether it is in the interests of justice.

B.8 *R v Underwood* [2004] EWCA Crim 2256, [2005] 1 Cr. App. R. 13, [2005] 1 Cr. App. R. (S.) 90 outlines the principles to be applied where the defendant admits that he or she is guilty, but disputes the basis of offending alleged by the prosecution:

(a) The prosecution may accept and agree the defendant's account of the disputed facts or reject it in its entirety, or in part. If the prosecution accepts the defendant's basis of plea, it must ensure that the basis of plea is factually accurate and enables the sentencing judge to impose a sentence appropriate to reflect the justice of the case;

(b) In resolving any disputed factual matters, the prosecution must consider its primary duty to the court and must not agree with or acquiesce in an agreement which contains material factual disputes;

(c) If the prosecution does accept the defendant's basis of plea, it must be reduced to writing, be signed by advocates for both sides, and made available to the judge prior to the prosecution's opening;

(d) An agreed basis of plea that has been reached between the parties should not contain matters which are in dispute and any aspects upon which there is not agreement should be clearly identified;

(e) On occasion, the prosecution may lack the evidence positively to dispute the defendant's account, for example, where the defendant asserts a matter outside the knowledge of the prosecution. Simply because the prosecution does not have evidence to contradict the defendant's assertions does not mean those assertions should be

agreed. In such a case, the prosecution should test the defendant's evidence and submissions by requesting a *Newton* hearing (*R v Newton* (1982) 77 Cr. App. R. 13, (1982) 4 Cr. App. R. (S.) 388), following the procedure set out below.

(f) If it is not possible for the parties to resolve a factual dispute when attempting to reach a plea agreement under this part, it is the responsibility of the prosecution to consider whether the matter should proceed to trial, or to invite the court to hold a *Newton* hearing as necessary.

B.9 *R v Underwood* emphasises that, whether or not pleas have been "agreed", the judge is not bound by any such agreement and is entitled of his or her own motion to insist that any evidence relevant to the facts in dispute (or upon which the judge requires further evidence for whatever reason) should be called. Any view formed by the prosecution on a proposed basis of plea is deemed to be conditional on the judge's acceptance of the basis of plea.

B.10 A judge is not entitled to reject a defendant's basis of plea absent a *Newton* hearing unless it is determined by the court that the basis is manifestly false and as such does not merit examination by way of the calling of evidence or alternatively the defendant declines the opportunity to engage in the process of the *Newton* hearing whether by giving evidence on his own behalf or otherwise.

(b) a plea of guilty on a basis signed by the defendant but in respect of which there is no or only partial agreement by the prosecution

B.11 Where the defendant pleads guilty, but disputes the basis of offending alleged by the prosecution and agreement as to that has not been reached, the following procedure should be followed:

(a) The defendant's basis of plea must be set out in writing, identifying what is in dispute and must be signed by the defendant;

(b) The prosecution must respond in writing setting out their alternative contentions and indicating whether or not they submit that a *Newton* hearing is necessary;

(c) The court may invite the parties to make representations about whether the dispute is material to sentence; and

(d) If the court decides that it is a material dispute, the court will invite such further representations or evidence as it may require and resolve the dispute in accordance with the principles set out in *R v Newton*.

B.12 Where the disputed issue arises from facts which are within the exclusive knowledge of the defendant and the defendant is willing to give evidence in support of his case, the defence advocate should be prepared to call the defendant. If the defendant is not willing to testify, and subject to any explanation which may be given, the judge may draw such inferences as appear appropriate.

B.13 The decision whether or not a *Newton* hearing is required is one for the judge. Once the decision has been taken that there will be a *Newton* hearing, evidence is called by the parties in the usual way and the criminal burden and standard of proof applies. Whatever view has been taken by the prosecution, the prosecutor should not leave the questioning to the judge, but should assist the court by exploring the issues which the court wishes to have explored. The rules of evidence should be followed as during a trial, and the judge should direct himself appropriately as the tribunal of fact. Paragraphs 6 to 10 of *Underwood* provide additional guidance regarding the *Newton* hearing procedure.

(c) a plea of guilty on a basis that contains within it matters that are purely mitigation and which do not amount to a contradiction of the prosecution case

B.14 A basis of plea should not normally set out matters of mitigation but there may be circumstances where it is convenient and sensible for the document outlining a basis to deal with facts closely aligned to the circumstances of the offending which amount to mitigation and which may need to be resolved prior to sentence. The resolution of these matters does not amount to a *Newton* hearing properly so defined and in so far as facts fall to be established the defence will have to discharge the civil burden in order to do so. The scope of the evidence required to resolve issues that are purely matters of mitigation is for the court to determine.

(d) Cases involving serious fraud – a plea of guilty upon a basis of plea agreed by the prosecution and defence accompanied by joint submissions as to sentence

B.15 This section applies when the prosecution and the defendant(s) to a matter before the Crown Court involving allegations of serious or complex fraud have agreed a basis of plea and seek to make submissions to the court regarding sentence.

B.16 Guidance for prosecutors regarding the operation of this procedure is set out in the 'Attorney General's Guidelines on Plea Discussions in Cases of Serious or Complex Fraud', which came into force on 5 May 2009 and is referred to in this direction as the "Attorney General's Plea Discussion Guidelines".

B.17 In this part –

(a) "a plea agreement" means a written basis of plea agreed between the prosecution and defendant(s) in accordance with the principles set out in *R v Underwood*, supported by admissible documentary evidence or admissions under section 10 of the Criminal Justice Act 1967;

(b) "a sentencing submission" means sentencing submissions made jointly by the prosecution and defence as to the appropriate sentencing authorities and applicable sentencing range in the relevant sentencing guideline relating to the plea agreement;

(c) "serious or complex fraud" includes, but is not limited to, allegations of fraud where two or more of the following are present:

(i) the amount obtained or intended to be obtained exceeded £500,000;

(ii) there is a significant international dimension;

(iii) the case requires specialised knowledge of financial, commercial, fiscal or regulatory matters such as the operation of markets, banking systems, trusts or tax regimes;

(iv) the case involves allegations of fraudulent activity against numerous victims;

(v) the case involves an allegation of substantial and significant fraud on a public body;

(vi) the case is likely to be of widespread public concern;

(vii) the alleged misconduct endangered the economic well-being of the United Kingdom, for example by undermining confidence in financial markets.

Procedure

B.18 The procedure regarding agreed bases of plea outlined above, applies with equal rigour to the acceptance of pleas under this procedure. However, because under this procedure the parties will have been discussing the plea agreement and the charges from a much earlier stage, it is vital that the judge is fully informed of all relevant background to the discussions, charges and the eventual basis of plea.

B.19 Where the defendant has not yet appeared before the Crown Court, the prosecutor must send full details of the plea agreement and sentencing submission(s) to the court, at least 7 days in advance of the defendant's first appearance. Where the defendant has already appeared before the Crown Court, the prosecutor must notify the court as soon as is reasonably practicable that a plea agreement and sentencing submissions under the Attorney General's Plea Discussion Guidelines are to be submitted. The court should set a date for the matter to be heard, and the prosecutor must send full details of the plea agreement and sentencing submission(s) to the court as soon as practicable, or in accordance with the directions of the court.

B.20 The provision to the judge of full details of the plea agreement requires sufficient information to be provided to allow the judge to understand the facts of the case and the history of the plea discussions, to assess whether the plea agreement is fair and in the interests of justice, and to decide the appropriate sentence. This will include, but is not limited to:

(i) the plea agreement;

(ii) the sentencing submission(s);

(iii) all of the material provided by the prosecution to the defendant in the course of the plea discussions;

(iv) relevant material provided by the defendant, for example documents relating to personal mitigation; and

(v) the minutes of any meetings between the parties and any correspondence generated in the plea discussions.

The parties should be prepared to provide additional material at the request of the court.

B.21 The court should at all times have regard to the length of time that has elapsed since the date of the occurrence of the events giving rise to the plea discussions, the time taken to interview the defendant, the date of charge and the prospective trial date (if the matter were to proceed to trial) so as to ensure that its consideration of the plea agreement and sentencing submissions does not cause any unnecessary further delay.

Status of plea agreement and joint sentencing submissions

B.22 Where a plea agreement and joint sentencing submissions are submitted, it remains entirely a matter for the court to decide how to deal with the case. The judge retains the absolute discretion to refuse to accept the plea agreement and to sentence otherwise than in accordance with the sentencing submissions made under the Attorney General's Plea Discussion Guidelines.

B.23 Sentencing submissions should draw the court's attention to any applicable range in any relevant guideline, and to any ancillary orders that may be applicable. Sentencing submissions should not include a specific sentence or agreed range other than the ranges set out in sentencing guidelines or authorities.

B.24 Prior to pleading guilty in accordance with the plea agreement, the defendant(s) may apply to the court for an indication of the likely maximum sentence under the procedure set out below (a '*Goodyear* indication').

B.25 In the event that the judge indicates a sentence or passes a sentence which is not within the submissions made on sentencing, the plea agreement remains binding.

B.26 If the defendant does not plead guilty in accordance with the plea agreement, or if a defendant who has pleaded guilty in accordance with a plea agreement, successfully applies to withdraw his plea under Rule 39.3 of the Criminal Procedure Rules, the signed plea agreement may be treated as confession evidence, and may be used against the defendant at a later stage in these or any other proceedings. Any credit for a timely guilty plea may be lost. The court may exercise its discretion under section 78 of the Police and Criminal Evidence Act 1984 to exclude any such evidence if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

B.27 Where a defendant has failed to plead guilty in accordance with a plea agreement, the case is unlikely to be ready for trial immediately. The prosecution may have been commenced earlier than it otherwise would have been, in reliance upon the defendant's agreement to plead guilty. This is likely to be a relevant consideration for the court in deciding whether or not to grant an application to adjourn or stay the proceedings to allow the matter to be prepared for trial in accordance with the protocol on the 'Control and Management of Heavy Fraud and other Complex Criminal Cases', or as required.

CPD VII Sentencing C: INDICATIONS OF SENTENCE: *R v Goodyear*

C.1 Prior to pleading guilty, it is open to a defendant in the Crown Court to request from the judge an indication of the maximum sentence that would be imposed if a guilty plea were to be tendered at that stage in the proceedings, in accordance with the guidance in *R v Goodyear* [2005] EWCA Crim 888, [2005] 1 W.L.R. 2532, [2005] 2 Cr. App. R. 20. The defence should notify the court and the prosecution of the intention to seek an indication in advance of any hearing.

C.2 Attention is drawn to the guidance set out in paragraphs 53 and following of *R v Goodyear*. The objective of the *Goodyear* guidelines is to safeguard against the creation or appearance of judicial pressure on a defendant. Any advance indication given should be the maximum sentence if a guilty plea were to be tendered at that stage of the proceedings only; the judge should not indicate the maximum possible sentence following conviction by a jury after trial. The judge should only give a *Goodyear* indication if one is requested by the defendant, although the judge can, in an appropriate case, remind the defence advocate of the defendant's entitlement to seek an advance indication of sentence.

C.3 Whether to give a *Goodyear* indication, and whether to give reasons for a refusal, is a matter for the discretion of the judge, to be exercised in accordance with the principles outlined by the Court of Appeal in that case. Such indications should normally not be given if there is a dispute as to the basis of plea unless the judge concludes that he or she can properly deal with the case without the need for a *Newton* hearing. If there is a basis of plea agreed by the prosecution and defence, it must be reduced into writing and a copy provided to the judge. As always, any basis of plea will be subject to the approval of the court. In cases where a dispute arises, the procedure in *R v Underwood* should be followed prior to the court considering a sentence indication further, as set out above. The judge should not become involved in negotiations about the acceptance of pleas or any agreed basis of plea, nor should a request be made for an indication of the different sentences that might be imposed if various different pleas were to be offered.

C.4 There should be no prosecution opening nor should the judge hear mitigation. However, during the sentence indication process the prosecution advocate is expected to assist the court by ensuring that the court has received all of the prosecution evidence, any statement from the victim about the impact of the offence, and any relevant previous convictions. Further, where appropriate, the prosecution should provide references to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court requires.

C.5 Attention is drawn to paragraph 70(d) of *Goodyear* which emphasises that the prosecution "should not say anything which may create the impression that the sentence indication has the support or approval of the Crown." This prohibition against the Crown indicating its approval of a particular sentence applies in all

circumstances when a defendant is being sentenced, including when joint sentencing submissions are made.

C.6 An indication, once given, is, save in exceptional circumstances (such as arose in *R v Newman* [2010] EWCA Crim 1566, [2011] 1 Cr. App. R. (S.) 68), binding on the judge who gave it, and any other judge, subject to overriding statutory obligations such as those following a finding of "dangerousness". In circumstances where a judge proposes to depart from a *Goodyear* indication this must only be done in a way that does not give rise to unfairness (see *Newman*). However, if the defendant does not plead guilty, the indication will not thereafter bind the court.

C.7 If the offence is a specified offence such that the defendant might be liable to an assessment of 'dangerousness' in accordance with the Criminal Justice Act 2003 it is unlikely that the necessary material for such an assessment will be available. The court can still proceed to give an indication of sentence, but should state clearly the limitations of the indication that can be given.

C.8 A *Goodyear* indication should be given in open court in the presence of the defendant but any reference to the hearing is not admissible in any subsequent trial; and reporting restrictions should normally be imposed.

CPD VII Sentencing D: FACTS TO BE STATED ON PLEAS OF GUILTY

D.1 To enable the press and the public to know the circumstances of an offence of which an accused has been convicted and for which he is to be sentenced, in relation to each offence to which an accused has pleaded guilty the prosecution shall state those facts in open court, before sentence is imposed.

CPD VII Sentencing E: CONCURRENT AND CONSECUTIVE SENTENCES

E.1 Where a court passes on a defendant more than one term of imprisonment, the court should state in the presence of the defendant whether the terms are to be concurrent or consecutive. Should this not be done, the court clerk should ask the court, before the defendant leaves court, to do so.

E.2 If a defendant is, at the time of sentence, already serving two or more consecutive terms of imprisonment and the court intends to increase the total period of imprisonment, it should use the expression 'consecutive to the total period of imprisonment to which you are already subject' rather than 'at the expiration of the term of imprisonment you are now serving', as the defendant may not then be serving the last of the terms to which he is already subject.

E.3 The Sentencing Council has issued a definitive guideline on Totality which should be consulted. Under section 125(1) of the Coroners and Justice Act 2009, for offences committed after 6 April 2010, the guideline must be followed unless it would be contrary to the interests of justice to do so.

CPD VII Sentencing F: VICTIM PERSONAL STATEMENTS

F.1 Victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'). The statement gives victims a formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. The court will take the statement into account when determining sentence. In some circumstances, it may be appropriate for relatives of a victim to make a VPS, for example where the victim has died as a result of the relevant criminal conduct. The revised Code of Practice for Victims of Crime, published on 29 October 2013 gives further information about victims' entitlements within the criminal justice system, and the duties placed on criminal justice agencies when dealing with victims of crime.

F.2 When a police officer takes a statement from a victim, the victim should be told about the scheme and given the chance to make a VPS. The decision about whether or not to make a VPS is entirely a matter for the victim; no pressure should be brought to bear on their decision, and no conclusion should be drawn if they choose not to make such a statement. A VPS or a further VPS may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not normally be appropriate for a VPS to be made after the disposal of the case; there may be rare occasions between sentence and appeal when a further VPS may be necessary, for example, when the victim was injured and the final prognosis was not available at the date of sentence. However, VPS after disposal should be confined to presenting up to date factual material, such as medical information, and should be used sparingly.

F.3 If the court is presented with a VPS the following approach, subject to the further guidance given by the Court of Appeal in *R v Perkins; Bennett; Hall* [2013] EWCA Crim 323, [2013] Crim L.R. 533, should be adopted:

a) The VPS and any evidence in support should be considered and taken into account by the court, prior to passing sentence.

b) Evidence of the effects of an offence on the victim contained in the VPS or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim. The maker of a VPS may be cross-examined on its content.

c) At the discretion of the court, the VPS may also be read aloud or played in open court, in whole or in part, or it may be summarised. If the VPS is to be read aloud, the court should also determine who should do so. In making these decisions, the court should take account of the victim's preferences, and follow them unless there is good reason not to do so;

examples of this include the inadmissibility of the content or the potentially harmful consequences for the victim or others. Court hearings should not be adjourned solely to allow the victim to attend court to read the VPS. For the purposes of CPD I General matters 5B: Access to information held by the court, a VPS that is read aloud or played in open court in whole or in part should be considered as such, and no longer treated as a confidential document.

d) In all cases it will be appropriate for a VPS to be referred to in the course of the sentencing hearing and/or in the sentencing remarks.

e) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

CPD VII Sentencing G: FAMILIES BEREAVED BY HOMICIDE AND OTHER CRIMINAL CONDUCT

G.1 In cases in which the victim has died as a result of the relevant criminal conduct, the victim's family is not a party to the proceedings, but does have an interest in the case. Bereaved families have particular entitlements under the Code of Practice for Victims of Crime. All parties should have regard to the needs of the victim's family and ensure that the trial process does not expose bereaved families to avoidable intimidation, humiliation or distress.

G.2 In so far as it is compatible with family members' roles as witnesses, the court should consider the following measures:

a) Practical arrangements being discussed with the family and made in good time before the trial, such as seating for family members in the courtroom; if appropriate, in an alternative area, away from the public gallery.

b) Warning being given to families if the evidence on a certain day is expected to be particularly distressing.

c) Ensuring that appropriate use is made of the scheme for Victim Personal Statements, in accordance with the paragraphs above.

G.3 The sentencer should consider providing a written copy of the sentencing remarks to the family after sentence has been passed. Sentencers should tend in favour of providing such a copy, unless there is good reason not to do so, and the copy should be provided as soon as is reasonably practicable after the sentencing hearing.

CPD VII Sentencing H: COMMUNITY IMPACT STATEMENTS

H.1 A community impact statement may be prepared by the police to make the court aware of particular crime trends in the local area and the impact of these on the local community.

H.2 Such statements must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he is not represented.

H.3 The community impact statement and any evidence in support should be considered and taken into account by the court, prior to passing sentence. The statement should be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the statement may be summarised or read out in open court.

H.4 The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the local community. Opinions as to what the sentence should be are therefore not relevant. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

H.5 Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the local community.

H.6 It will not be appropriate for a Community Impact Statement to be made after disposal of the case but before an appeal.

CPD VII Sentencing I: IMPACT STATEMENTS FOR BUSINESSES

I.1 Individual victims of crime are invited to make a statement, known as a Victim Personal Statement ('VPS'), see CPD VII Sentencing F. If the victim, or one of the victims, is a business or enterprise (including charities but excluding public sector bodies), of any size, a nominated representative may make an Impact Statement for Business ('ISB'). The ISB gives a formal opportunity for the court to be informed how a crime has affected a business. The court will take the statement into account when determining sentence. This does not prevent individual employees from making a VPS about the impact of the same crime on them as individuals. Indeed the ISB should be about the impact on the business exclusively, and the impact on any individual included within a VPS.

I.2 When a police officer takes statements about the alleged offence, he or she should also inform the business about the scheme. An ISB may be made to the police at that time, or the ISB template may be downloaded from www.police.uk, completed and emailed or posted to the relevant police contact. Guidance on how to complete

the form is available on www.police.uk and on the CPS website. There is no obligation on any business to make an ISB.

I.3 An ISB or an updated ISB may be made (in proper s.9 form, see below) at any time prior to the disposal of the case. It will not be appropriate for an ISB to be made after disposal of the case but before an appeal.

I.4 A business wishing to make an ISB should consider carefully who to nominate as the representative to make the statement on its behalf. A person making an ISB on behalf of a business, the nominated representative, must be authorised to do so on behalf of the business, either by nature of their position within the business, such as a director or owner, or by having been suitably authorised, such as by the owner or Board of Directors. The nominated representative must also be in a position to give admissible evidence about the impact of the crime on the business. This will usually be through first hand personal knowledge, or using business documents (as defined in section 117 of the Criminal Justice Act 2003). The most appropriate person will vary depending on the nature of the crime, and the size and structure of the business and may for example include a manager, director, chief executive or shop owner.

I.5 If the nominated representative leaves the business before the case comes to court, he or she will usually remain the representative, as the ISB made by him or her will still provide the best evidence of the impact of the crime, and he or she could still be asked to attend court. Nominated representatives should be made aware of the on-going nature of the role at the time of making the ISB.

I.6 If necessary a further ISB may be provided to the police if there is a change in circumstances. This could be made by an alternative nominated representative. However, the new ISB will usually supplement, not replace, the original ISB and again must contain admissible evidence. The prosecutor will decide which ISB to serve on the defence as evidence, and any ISB that is not served in evidence will be included in the unused material and considered for disclosure to the defence.

I.7 The ISB must be made in proper form, that is as a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report; and served in good time upon the defendant's solicitor or the defendant, if he or she is not represented. The maker of an ISB can be cross-examined on its content.

I.8 The ISB and any evidence in support should be considered and taken into account by the court, prior to passing sentence. The statement should be referred to in the course of the sentencing hearing and/or in the sentencing remarks. Subject to the court's discretion, the contents of the statement may be summarised or read out in open court; the views of the business should be taken into account in reaching a decision.

I.9 The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victims, including any business victim. Opinions as to what the sentence should be are therefore not relevant. If,

despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

I.10 Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on a business.

CPD VII Sentencing J: BINDING OVER ORDERS AND CONDITIONAL DISCHARGES

J.1 This direction takes into account the judgments of the European Court of Human Rights in *Steel v United Kingdom* (1999) 28 EHRR 603, [1998] Crim. L.R. 893 and in *Hashman and Harrup v United Kingdom* (2000) 30 EHRR 241, [2000] Crim. L.R. 185. Its purpose is to give practical guidance, in the light of those two judgments, on the practice of imposing binding over orders. The direction applies to orders made under the court's common law powers, under the Justices of the Peace Act 1361, under section 1(7) of the Justices of the Peace Act 1968 and under section 115 of the Magistrates' Courts Act 1980. This direction also gives guidance concerning the court's power to bind over parents or guardians under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 and the Crown Court's power to bind over to come up for judgment. The court's power to impose a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 is also covered by this direction.

Binding over to keep the peace

J.2 Before imposing a binding over order, the court must be satisfied so that it is sure that a breach of the peace involving violence, or an imminent threat of violence, has occurred or that there is a real risk of violence in the future. Such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct.

J.3 In light of the judgment in *Hashman*, courts should no longer bind an individual over "to be of good behaviour". Rather than binding an individual over to "keep the peace" in general terms, the court should identify the specific conduct or activity from which the individual must refrain.

Written order

J.4 When making an order binding an individual over to refrain from specified types of conduct or activities, the details of that conduct or those activities should be specified by the court in a written order, served on all relevant parties. The court should state its reasons for the making of the order, its length and the amount of the recognisance. The length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months.

Evidence

J.5 Sections 51 to 57 of the Magistrates' Courts Act 1980 set out the jurisdiction of the magistrates' court to hear an application made on complaint and the procedure which is to be followed. This includes a requirement under section 53 to hear

evidence and the parties, before making any order. This practice should be applied to all cases in the magistrates' court and the Crown Court where the court is considering imposing a binding over order. The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.

J.6 Where there is an admission which is sufficient to found the making of a binding over order and / or the individual consents to the making of the order, the court should nevertheless hear sufficient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

J.7 Where there is an allegation of breach of a binding over order and this is contested, the court should hear representations and evidence, including oral evidence, from the parties before making a finding. If unrepresented and no opportunity has been given previously the court should give a reasonable period for the person said to have breached the binding over order to find representation.

Burden and standard of proof

J.8 The court should be satisfied so that it is sure of the matters complained of before a binding over order may be imposed. Where the procedure has been commenced on complaint, the burden of proof rests on the complainant. In all other circumstances, the burden of proof rests upon the prosecution.

J.9 Where there is an allegation of breach of a binding over order, the court should be satisfied on the balance of probabilities that the defendant is in breach before making any order for forfeiture of a recognisance. The burden of proof shall rest on the prosecution.

Recognisance

J.10 The court must be satisfied on the merits of the case that an order for binding over is appropriate and should announce that decision before considering the amount of the recognisance. If unrepresented, the individual who is made subject to the binding over order should be told he has a right of appeal from the decision.

J.11 When fixing the amount of recognisance, courts should have regard to the individual's financial resources and should hear representations from the individual or his legal representatives regarding finances.

J.12 A recognisance is made in the form of a bond giving rise to a civil debt on breach of the order.

Refusal to enter into a recognizance

J.13 If there is any possibility that an individual will refuse to enter a recognizance, the court should consider whether there are any appropriate alternatives to a binding

over order (for example, continuing with a prosecution). Where there are no appropriate alternatives and the individual continues to refuse to enter into the recognisance, the court may commit the individual to custody. In the magistrates' court, the power to do so will derive from section 1(7) of the Justices of the Peace Act 1968 or, more rarely, from section 115(3) of the Magistrates' Courts Act 1980, and the court should state which power it is acting under; in the Crown Court, this is a common law power.

J.14 Before the court exercises a power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings if the individual so wishes. Public funding should generally be granted to cover representation. In the Crown Court this rests with the Judge who may grant a Representation Order.

J.15 In the event that the individual does not take the opportunity to seek legal advice, the court shall give the individual a final opportunity to comply with the request and shall explain the consequences of a failure to do so.

Antecedents

J.16 Courts are reminded of the provisions of section 7(5) of the Rehabilitation of Offenders Act 1974 which excludes from a person's antecedents any order of the court "with respect to any person otherwise than on a conviction".

Binding over to come up for judgment

J.17 If the Crown Court is considering binding over an individual to come up for judgment, the court should specify any conditions with which the individual is to comply in the meantime and not specify that the individual is to be of good behaviour.

J.18 The Crown Court should, if the individual is unrepresented, explain the consequences of a breach of the binding over order in these circumstances.

Binding over of parent or guardian

J.19 Where a court is considering binding over a parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 to enter into a recognisance to take proper care of and exercise proper control over a child or young person, the court should specify the actions which the parent or guardian is to take.

Security for good behaviour

J.20 Where a court is imposing a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000, it has the power, under section 12(6) to make an order that a person who consents to do so give security for the good behaviour of the offender. When making such an order, the court should specify the type of conduct from which the offender is to refrain.

CPD VII Sentencing K: COMMITTAL FOR SENTENCE

K.1 Rule 42.10 applies when a case is committed to the Crown Court for sentence and specifies the information and documentation that must be provided by the magistrates' court. On a committal for sentence any reasons given by the magistrates for their decision should be included with the documents. All of these documents should be made available to the judge in the Crown Court if the judge requires them, in order to decide before the hearing questions of listing or representation or the like. They will also be available to the court during the hearing if it becomes necessary or desirable for the court to see what happened in the lower court.

CPD VII Sentencing L: IMPOSITION OF LIFE SENTENCES

L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 empowers a judge when passing a sentence of life imprisonment, where such a sentence is not fixed by law, to specify by order such part of the sentence ('the relevant part') as shall be served before the prisoner may require the Secretary of State to refer his case to the Parole Board. This is applicable to defendants under the age of 18 years as well as to adult defendants.

L.2 Thus the life sentence falls into two parts:

(a) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence, and

(b) the remaining part of the sentence, during which the prisoner's detention will be governed by consideration of risk to the public.

L.3 The judge is not obliged by statute to make use of the provisions of section 82A when passing a life sentence. However, the judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.

L.4 In cases where the judge is to specify the relevant part of the sentence under section 82A, the judge should permit the advocate for the defendant to address the court as to the appropriate length of the relevant part. Where no relevant part is to be specified, the advocate for the defendant should be permitted to address the court as to the appropriateness of this course of action.

L.5 In specifying the relevant part of the sentence, the judge should have regard to the specific terms of section 82A and should indicate the reasons for reaching his decision as to the length of the relevant part.

CPD VII Sentencing M: MANDATORY LIFE SENTENCES

M.1 The purpose of this section is to give practical guidance as to the procedure for passing a mandatory life sentence under section 269 and schedule 21 of the Criminal Justice Act 2003 ('the Act'). This direction also gives guidance as to the

transitional arrangements under section 276 and schedule 22 of the Act. It clarifies the correct approach to looking at the practice of the Secretary of State prior to December 2002 for the purposes of schedule 22 of the Act, in the light of the judgment in *R. v Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762,[2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67.

M.2 Section 269 came into force on 18 December 2003. Under section 269, all courts passing a mandatory life sentence must either announce in open court the minimum term the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (as amended by section 275 of the Act), or announce that the seriousness of the offence is so exceptionally high that the early release provisions should not apply at all (a 'whole life order').

M.3 In setting the minimum term, the court must set the term it considers appropriate taking into account the seriousness of the offence. In considering the seriousness of the offence, the court must have regard to the general principles set out in Schedule 21 of the Act as amended and any guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21. Although it is necessary to have regard to such guidance, it is always permissible not to apply the guidance if a judge considers there are reasons for not following it. It is always necessary to have regard to the need to do justice in the particular case. However, if a court departs from any of the starting points given in Schedule 21, the court is under a duty to state its reasons for doing so (section 270(2)(b) of the Act).

M.4 Schedule 21 states that the first step is to choose one of five starting points: "whole life", 30 years, 25 years, 15 years or 12 years. Where the 15 year starting point has been chosen, judges should have in mind that this starting point encompasses a very broad range of murders. At paragraph 35 of *Sullivan*, the court found it should not be assumed that Parliament intended to raise all minimum terms that would previously have had a lower starting point, to 15 years.

M.5 Where the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the appropriate starting point is a 'whole life order'. (paragraph 4(1) of Schedule 21). The effect of such an order is that the early release provisions in section 28 of the Crime (Sentences) Act 1997 will not apply. Such an order should only be specified where the court considers that the seriousness of the offence (or the combination of the offence and one or more other offences associated with it) is exceptionally high. Paragraph 4 (2) sets out examples of cases where it would normally be appropriate to take the 'whole life order' as the appropriate starting point.

M.6 Where the offender is aged 18 to 20 and commits a murder that is so serious that it would require a whole life order if committed by an offender aged 21 or over, the appropriate starting point will be 30 years. (Paragraph 5(2)(h) of Schedule 21).

M.7 Where a case is not so serious as to require a 'whole life order' but where the seriousness of the offence is particularly high and the offender was aged 18 or over when he committed the offence, the appropriate starting point is 30 years (paragraph 5(1) of Schedule 21). Paragraph 5 (2) sets out examples of cases where a 30 year starting point would normally be appropriate (if they do not require a 'whole life order').

M.8 Where the offender was aged 18 or over when he committed the offence, took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used it in committing the murder, the offence is normally to be regarded as sufficiently serious for an appropriate starting point of 25 years (paragraph 5A of Schedule 21).

M.9 Where the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4 (1), 5 (1) or 5A(1) of Schedule 21, the appropriate starting point is 15 years (see paragraph 6).

M.10 18 to 20 year olds are only the subject of the 30-year, 25-year and 15-year starting points.

M.11 The appropriate starting point when setting a sentence of detention during Her Majesty's pleasure for offenders aged under 18 when they committed the offence is always 12 years (paragraph 7 of Schedule 21).

M.12 The second step after choosing a starting point is to take account of any aggravating or mitigating factors which would justify a departure from the starting point. Additional aggravating factors (other than those specified in paragraphs 4 (2), 5(2) and 5A) are listed at paragraph 10 of Schedule 21. Examples of mitigating factors are listed at paragraph 11 of Schedule 21. Taking into account the aggravating and mitigating features, the court may add to or subtract from the starting point to arrive at the appropriate punitive period.

M.13 The third step is that the court should consider the effect of section 143(2) of the Act in relation to previous convictions; section 143(3) of the Act where the offence was committed whilst the offender was on bail; and section 144 of the Act where the offender has pleaded guilty (paragraph 12 of Schedule 21). The court should then take into account what credit the offender would have received for a remand in custody under section 240 or 240ZA of the Act and/or for a remand on bail subject to a qualifying curfew condition under section 240A, but for the fact that the mandatory sentence is one of life imprisonment. Where the offender has been thus remanded in connection with the offence or a related offence, the court should have in mind that no credit will otherwise be given for this time when the prisoner is considered for early release. The appropriate time to take it into account is when setting the minimum term. The court should make any appropriate subtraction from the punitive period it would otherwise impose, in order to reach the minimum term.

M.14 Following these calculations, the court should have arrived at the appropriate minimum term to be announced in open court. As paragraph 9 of Schedule 21

makes clear, the judge retains ultimate discretion and the court may arrive at any minimum term from any starting point. The minimum term is subject to appeal by the offender under section 271 of the Act and subject to review on a reference by the Attorney-General under section 272 of the Act.

CPD VII Sentencing N: TRANSITIONAL ARRANGEMENTS FOR SENTENCES WHERE THE OFFENCE WAS COMMITTED BEFORE 18 DECEMBER 2003

N.1 Where the court is passing a sentence of mandatory life imprisonment for an offence committed before 18 December 2003, the court should take a fourth step in determining the minimum term in accordance with section 276 and Schedule 22 of the Act.

N.2 The purpose of those provisions is to ensure that the sentence does not breach the principle of non-retroactivity, by ensuring that a lower minimum term would not have been imposed for the offence when it was committed. Before setting the minimum term, the court must check whether the proposed term is greater than that which the Secretary of State would probably have notified under the practice followed by the Secretary of State before December 2002.

N.3 The decision in *Sullivan, Gibbs, Elener and Elener* [2004] EWCA Crim 1762, [2005] 1 Cr. App. R. 3, [2005] 1 Cr. App. R. (S.) 67 gives detailed guidance as to the correct approach to this practice and judges passing mandatory life sentences where the murder was committed prior to 18 December 2003 are well advised to read that judgment before proceeding.

N.4 The practical result of that judgment is that in sentences where the murder was committed before 31 May 2002, the best guide to what would have been the practice of the Secretary of State is the letter sent to judges by Lord Bingham CJ on 10th February 1997, the relevant parts of which are set out below.

N.5 The practice of Lord Bingham, as set out in his letter of 10 February 1997, was to take 14 years as the period actually to be served for the 'average', 'normal' or 'unexceptional' murder. Examples of factors he outlined as capable, in appropriate cases, of mitigating the normal penalty were:

(1) Youth;
(2) Age (where relevant to physical capacity on release or the likelihood of the defendant dying in prison);
(3) [Intellectual disability or mental disorder];
(4) Provocation (in a non-technical sense), or an excessive response to a personal threat;
(5) The absence of an intention to kill;
(6) Spontaneity and lack of premeditation (beyond that necessary to constitute the offence: e.g. a sudden response to family pressure or to prolonged and eventually insupportable stress);
(7) Mercy killing;
(8) A plea of guilty, or hard evidence of remorse or contrition.

N.6 Lord Bingham then listed the following factors as likely to call for a sentence more severe than the norm:

(1) Evidence of planned, professional, revenge or contract killing;
(2) The killing of a child or a very old or otherwise vulnerable victim;
(3) Evidence of sadism, gratuitous violence, or sexual maltreatment, humiliation or degradation before the killing;
(4) Killing for gain (in the course of burglary, robbery, blackmail, insurance fraud, etc.);
(5) Multiple killings;
(6) The killing of a witness, or potential witness, to defeat the ends of justice;
(7) The killing of those doing their public duty (policemen, prison officers, postmasters, firemen, judges, etc.);
(8) Terrorist or politically motivated killings;
(9) The use of firearms or other dangerous weapons, whether carried for defensive or offensive reasons;
(10) A substantial record of serious violence;
(11) Macabre attempts to dismember or conceal the body.

N.7 Lord Bingham further stated that the fact that a defendant was under the influence of drink or drugs at the time of the killing is so common he would be inclined to treat it as neutral. But in the not unfamiliar case in which a couple, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, then he would tend to recommend a term somewhat below the norm.

N.8 Lord Bingham went on to say that given the intent necessary for proof of murder, the consequences of taking life and the understandable reaction of relatives to the deceased, a substantial term will almost always be called for, save perhaps in a truly venial case of mercy killing. While a recommendation of a punitive term longer than, say, 30 years will be very rare indeed, there should not be any upper limit. Some crimes will certainly call for terms very well in excess of the norm.

N.9 For the purposes of sentences where the murder was committed after 31 May 2002 and before 18 December 2003, the judge should apply the Practice Statement handed down on 31 May 2002 reproduced at paragraphs N.10 to N.20 below.

N.10 This Statement replaces the previous single normal tariff of 14 years by substituting a higher and a normal starting point of respectively 16 (comparable to 32 years) and 12 years (comparable to 24 years). These starting points have then to be increased or reduced because of aggravating or mitigating factors such as those referred to below. It is emphasised that they are no more than starting points.

The normal starting point of 12 years

N.11 Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph N.13. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

N.12 The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:-

(a) the case came close to the borderline between murder and manslaughter; or

(b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or

(c) the offender was provoked (in a non-technical sense) such as by prolonged and eventually unsupportable stress; or

(d) the case involved an over-reaction in self-defence; or

(e) the offence was a mercy killing.

These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

N.13 The higher starting point will apply to cases where the offender's culpability was exceptionally high, or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as:-

(a) the killing was 'professional' or a contract killing;

(b) the killing was politically motivated;

(c) the killing was done for gain (in the course of a burglary, robbery etc.);

(d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);

(e) the victim was providing a public service;

(f) the victim was a child or was otherwise vulnerable;

(g) the killing was racially aggravated;

(h) the victim was deliberately targeted because of his or her religion or sexual orientation;

(i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;

(j) extensive and/or multiple injuries were inflicted on the victim before death;

(k) the offender committed multiple murders.

Variation of the starting point

N.14 Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

N.15 Aggravating factors relating to the offence can include:

(a) the fact that the killing was planned;

(b) the use of a firearm;

(c) arming with a weapon in advance;

(d) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
(e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

N.16 Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

N.17 Mitigating factors relating to the offence will include:
(a) an intention to cause grievous bodily harm, rather than to kill;
(b) spontaneity and lack of pre-meditation.

N.18 Mitigating factors relating to the offender may include:
(a) the offender's age;
(b) clear evidence of remorse or contrition;
(c) a timely plea of guilty.

Very serious cases

N.19 A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

N.20 Among the categories of case referred to in paragraph N.13, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder, or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.

N.21 In following this guidance, judges should bear in mind the conclusion of the Court in *Sullivan* that the general effect of both these statements is the same. While Lord Bingham does not identify as many starting points, it is open to the judge to come to exactly the same decision irrespective of which was followed. Both pieces of guidance give the judge a considerable degree of discretion.

CPD VII Sentencing P: PROCEDURE FOR ANNOUNCING THE MINIMUM TERM IN OPEN COURT

P.1 Having gone through the three or four steps outlined above, the court is then under a duty, under section 270 of the Act, to state in open court, in ordinary language, its reasons for deciding on the minimum term or for passing a whole life order.

P.2 In order to comply with this duty, the court should state clearly the minimum term it has determined. In doing so, it should state which of the starting points it has chosen and its reasons for doing so. Where the court has departed from that starting point due to mitigating or aggravating features, it must state the reasons for that departure and any aggravating or mitigating features which have led to that departure. At that point, the court should also declare how much, if any, time is being deducted for time spent in custody and/or on bail subject to a qualifying curfew condition. The court must then explain that the minimum term is the minimum amount of time the prisoner will spend in prison, from the date of sentence, before the Parole Board can order early release. If it remains necessary for the protection of the public, the prisoner will continue to be detained after that date. The court should also state that where the prisoner has served the minimum term and the Parole Board has decided to direct release, the prisoner will remain on licence for the rest of his life and may be recalled to prison at any time.

P.3 Where the offender was 21 or over when he committed the offence and the court considers that the seriousness of the offence is so exceptionally high that a 'whole life order' is appropriate, the court should state clearly its reasons for reaching this conclusion. It should also explain that the early release provisions will not apply.

Part 42 Sentencing procedures in special cases

Part 43 - [Empty]

Part 44 Breach, revocation and amendment of community and other orders

Part 45 - [Empty]

Part 46 - [Empty]

Part 47 - [Empty]

Part 48 - [Empty]

Part 49 - [Empty]

Part 50 Civil behaviour orders after verdict or finding

Part 51 - [Empty]

Part 52 Enforcement of fines and other orders for payment

Part 53 - [Empty]

Part 54 - [Empty]

VIII Confiscation and related proceedings

IX Contempt of court

CPD IX Contempt of court 62A: CONTEMPT IN THE FACE OF THE MAGISTRATES' COURT

General

62A.1 The procedure to be followed in cases of contempt of court is given in Part 62 of the Rules. The magistrates' courts' power to deal with contempt in the face of the court is contained within section 12 of the Contempt of Court Act 1981. Magistrates' courts also have the power to punish a witness who refuses to be sworn or give evidence under section 97(4) of the Magistrates' Courts Act 1980.

Contempt consisting of wilfully insulting anyone specified in section 12 or interrupting proceedings

62A.2 In the majority of cases, an apology and a promise as to future conduct should be sufficient for the court to order a person's release. However, there are likely to be certain cases where the nature and seriousness of the misconduct requires the court to consider using its powers, under section 12(2) of the Contempt of Court Act 1981, either to fine or to order the person's committal to custody.

Imposing a penalty for contempt

62A.3 The court should allow the person a further opportunity to apologise for his or her contempt, and should follow the procedure at r.62.8(4). The court should consider whether it is appropriate to release the person or whether it must exercise its powers to fine the person or to commit the person to custody under section 12 (2) of the 1981 Act. In deciding how to deal with the person, the court should have regard to the period for which he or she has been detained, whether the conduct was admitted and the seriousness of the contempt. Any period of committal to custody should be for the shortest period of time commensurate with the interests of preserving good order in the administration of justice.

X Appeal

Part 63 Appeal to the Crown Court

CPD X Appeal 63A: APPEALS TO THE CROWN COURT

63A.1 Rule 63.4 applies when a defendant appeals to the Crown Court against conviction or sentence and specifies the information and documentation that must be provided by the magistrates' court.

63A.2 On an appeal against conviction, the reasons given by the magistrates for their decision should not be included with the documents; the appeal hearing is not a review of the magistrates' court's decision but a re-hearing.

63A.3 On an appeal against sentence, the magistrates' court's reasons and factual finding leading to the finding of guilt should be included, but any reasons for the sentence imposed should be omitted as the Crown Court will be conducting a fresh sentencing exercise.

Part 64 Appeal to the High Court by way of case stated

Part 65 Appeal to the Court of Appeal: general rules

Part 66 Appeal to the Court of Appeal against ruling at preparatory hearing

Part 67 Appeal to the Court of Appeal against ruling adverse to prosecution

Part 68 Appeal to the Court of Appeal about conviction or sentence

CPD X Appeal 68A: APPEALS AGAINST CONVICTION AND SENTENCE – THE PROVISION OF NOTICE TO THE PROSECUTION

68A.1 When an appeal notice served under Rule 68.2 is received by the Registrar of Criminal Appeals, the Registrar will notify the relevant prosecution authority, giving the case name, reference number and the trial or sentencing court.

68A.2 If the court or the Registrar directs, or invites, the prosecution authority to serve a respondent's notice under Rule 68.6, prior to the consideration of leave, the Registrar will also at that time serve on the prosecution authority the appeal notice containing the grounds of appeal and the transcripts, if available. If the prosecution authority is not directed or invited to serve a respondent's notice but wishes to do so, the authority should request the grounds of appeal and any existing transcript from the Criminal Appeal Office. Any respondent's notice received prior to the consideration of leave will be made available to the single judge.

68A.3 The Registrar of Criminal Appeals will notify the relevant prosecution authority in the event that:

(a) leave to appeal against conviction or sentence is granted by the single Judge; or

(b) the single Judge or the Registrar refers an application for leave to appeal against conviction or sentence to the Full Court for determination; or

(c) there is to be a renewed application for leave to appeal against sentence only.

If the prosecution authority has not yet been served with the appeal notice and transcript, the Registrar will serve these with the notification, and if leave is granted, the Registrar will also serve the authority with the comments of the single judge.

68A.4 The prosecution should notify the Registrar without delay if they wish to be represented at the hearing. The prosecution should note that the Registrar will not delay listing to await a response from the Prosecution as to whether they wish to attend. Prosecutors should note that occasionally, for example, where the single Judge fixes a hearing date at short notice, the case may be listed very quickly.

68A.5 If the prosecution wishes to be represented at any hearing, the notification should include details of Counsel instructed and a time estimate. An application by the prosecution to remove a case from the list for Counsel's convenience, or to allow further preparation time, will rarely be granted.

68A.6 There may be occasions when the Court of Appeal Criminal Division will grant leave to appeal to an unrepresented applicant and proceed forthwith with the appeal in the absence of the appellant and Counsel. The prosecution should not attend any hearing at which the appellant is unrepresented. *Nasteska v. The former Yugoslav Republic of Macedonia (Application No.23152/05)* As a Court of Review, the Court of Appeal Criminal Division would expect the prosecution to have raised any specific matters of relevance with the sentencing Judge in the first instance.

CPD X Appeal 68B: LISTING OF APPEALS AGAINST CONVICTION AND SENTENCE IN THE COURT OF APPEAL CRIMINAL DIVISION (CACD)

68B.1 Arrangements for the fixing of dates for the hearing of appeals will be made by the Criminal Appeal Office Listing Officer, under the superintendence of the Registrar of Criminal Appeals who may give such directions as he deems necessary.

68B.2 Where possible, regard will be had to an advocate's existing commitments. However, in relation to the listing of appeals, the Court of Appeal takes precedence over all lower courts, including the Crown Court. Wherever practicable, a lower court will have regard to this principle when making arrangements to release an advocate to appear in the Court of Appeal. In case of difficulty the lower court should communicate with the Registrar. In general an advocate's commitment in a lower court will not be regarded as a good reason for failing to accept a date proposed for a hearing in the Court of Appeal.

68B.3 Similarly when the Registrar directs that an appellant should appear by video link, the prison must give precedence to video-links to the Court of Appeal over video-links to the lower courts, including the Crown Court.

68B.4 The copy of the Criminal Appeal Office summary provided to advocates will contain the summary writer's time estimate for the whole hearing including delivery of judgment. It will also contain a time estimate for the judges' reading time of the core material. The Listing Officer will rely on those estimates, unless the advocate for the appellant or the Crown provides different time estimates to the Listing Officer, in writing, within 7 days of the receipt of the summary by the advocate. Where the time estimates are considered by an advocate to be inadequate, or where the estimates have been altered because, for example, a ground of appeal has been abandoned, it is the duty of the advocate to inform the Court promptly, in which event the Registrar will reconsider the time estimates and inform the parties accordingly.

68B.5 The following target times are set for the hearing of appeals. Target times will run from the receipt of the appeal by the Listing Officer, as being ready for hearing.

68B.6

NATURE OF APPEAL:	*FROM RECEIPT BY LISTING OFFICER TO FIXING OF HEARING DATE:*	*FROM FIXING OF HEARING DATE TO HEARING:*	**TOTAL TIME FROM RECEIPT BY LISTING OFFICER TO HEARING:**
Sentence Appeal	14 days	14 days	28 days
Conviction Appeal	21 days	42 days	63 days
Conviction Appeal where witness to attend	28 days	52 days	80 days

68B.7 Where legal vacations impinge, these periods may be extended. Where expedition is required, the Registrar may direct that these periods be abridged.

68B.8 "Appeal" includes an application for leave to appeal which requires an oral hearing.

CPD X Appeal 68C: APPEAL NOTICES CONTAINING GROUNDS OF APPEAL

68C.1 The requirements for the service of notices of appeal and the time limits for doing so are as set out in Part 68 of the Criminal Procedure Rules. The Court must be provided with an appeal notice as a single document which sets out the grounds of appeal. Advocates should not provide the Court with an advice addressed to lay or professional clients. Any appeal notice or grounds of appeal served on the Court will usually be provided to the respondent.

68C.2 Advocates should not settle grounds unless they consider that they are properly arguable. Grounds should be carefully drafted; the Court is not assisted by grounds of appeal which are not properly set out and particularised. Should leave to amend the grounds be granted, it is most unlikely that further grounds will be entertained.

CPD X Appeal 68D: RESPONDENTS' NOTICES

68D.1 The requirements for the service of respondents' notices and the time limits for doing so are as set out in Part 68 of the Criminal Procedure Rules. Any respondent's notice served should be in accordance with Rule 68.6. The Court does not require a response to the respondent's notice.

CPD X Appeal 68E: LOSS OF TIME

68E.1 Both the Court and the single judge have power, in their discretion, under the Criminal Appeal Act 1968 sections 29 and 31, to direct that part of the time during which an applicant is in custody after lodging his notice of application for leave to appeal should not count towards sentence. Those contemplating an appeal should seek advice and should remember that a notice of appeal without grounds is ineffective and that grounds should be substantial and particularised and not a mere formula. When leave to appeal has been refused by the single judge, it is often of assistance to consider the reasons given by the single judge before making a decision whether to renew the application. Where an application devoid of merit has been refused by the single judge he may indicate that the Full Court should consider making a direction for loss of time on renewal of the application. However the Full Court may make such a direction whether or not such an indication has been given by the single judge.

68E.2 Applicants and counsel are reminded of the warning given by the Court of Appeal in *R v Hart and Others* [2006] EWCA Crim 3239, [2007] 1 Cr. App. R. 31, [2007] 2 Cr. App. R. (S.) 34 and should 'heed the fact that this court is prepared to exercise its

power … The mere fact that counsel has advised that there are grounds of appeal will not always be a sufficient answer to the question as to whether or not an application has indeed been brought which was totally without merit.'

CPD X Appeal 68F: SKELETON ARGUMENTS

68F.1 Skeleton arguments are not required, but may be provided. Advocates intending to serve a skeleton argument should consider carefully whether a skeleton argument is necessary, or whether the appeal notice or the respondent's notice will suffice. In most cases, if the appeal notice and respondent's notice have been prepared in compliance with Part 68, a skeleton argument will be unnecessary. Advocates should always ensure that the Court, and any other party as appropriate, has a single document containing all of the points that are to be argued.

68F.2 The appellant's skeleton argument, if any, must be served no later than 21 days before the hearing date, and the respondent's skeleton argument, if any, no later than 14 days before the hearing date, unless otherwise directed by the Court.

68F.3 A skeleton argument, if provided, should contain a numbered list of the points the advocate intends to argue, grouped under each ground of appeal, and stated in no more than one or two sentences. It should be as succinct as possible. Advocates should ensure that the correct Criminal Appeal Office number appears at the beginning of the respondent's notice and any skeleton argument and that their names are at the end.

CPD X Appeal 68G: CRIMINAL APPEAL OFFICE SUMMARIES

68G.1 To assist the Court, the Criminal Appeal Office prepares summaries of the cases coming before it. These are entirely objective and do not contain any advice about how the Court should deal with the case or any view about its merits. They consist of two Parts.

68G.2 Part I, which is provided to all of the advocates in the case, generally contains:

(a) particulars of the proceedings in the Crown Court, including representation and details of any co-accused,

(b) particulars of the proceedings in the Court of Appeal (Criminal Division),

(c) the facts of the case, as drawn from the transcripts, appeal notice, respondent's notice, witness statements and / or the exhibits,

(d) the submissions and rulings, summing up and sentencing remarks.

68G.3 The contents of the summary are a matter for the professional judgment of the writer, but an advocate wishing to suggest any significant alteration to Part I should write to the Registrar of Criminal Appeals. If the Registrar does not agree, the summary and the letter will be put to the Court for decision. The Court will not generally be willing to hear oral argument about the content of the summary.

68G.4 Advocates may show Part I of the summary to their professional or lay clients (but to no one else) if they believe it would help to check facts or formulate arguments,

but summaries are not to be copied or reproduced without the permission of the Criminal Appeal Office; permission for this will not normally be given in cases involving children, or sexual offences, or where the Crown Court has made an order restricting reporting.

68G.5 Unless a judge of the High Court or the Registrar of Criminal Appeals gives a direction to the contrary, in any particular case involving material of an explicitly salacious or sadistic nature, Part I will also be supplied to appellants who seek to represent themselves before the Full Court, or who renew to the full court their applications for leave to appeal against conviction or sentence.

68G.6 Part II, which is supplied to the Court alone, contains

(a) a summary of the grounds of appeal and

(b) in appeals against sentence (and applications for such leave), summaries of the antecedent histories of the parties and of any relevant pre-sentence, medical or other reports.

68G.7 All of the source material is provided to the Court and advocates are able to draw attention to anything in it which may be of particular relevance.

Part 69 Appeal to the Court of Appeal regarding reporting or public access restriction

Part 70 Reference to the Court of Appeal of point of law or unduly lenient sentencing

Part 71 Appeal to the Court of Appeal under the Proceeds of Crime Act 2002: general rules

Part 72 Appeal to the Court of Appeal under the Proceeds of Crime Act 2002: prosecutor's appeal regarding confiscation

Part 73 Appeal to the Court of Appeal under the Proceeds of Crime Act 2002: restraint or receivership orders

Part 74 Appeal or reference to the Supreme Court

Part 75 Request to the European Court for a preliminary ruling

CPD X Appeal 75A: REFERENCES TO THE EUROPEAN COURT OF JUSTICE

75A.1 Further to rule 75.3 of the Criminal Procedure Rules, the order containing the reference shall be filed with the Senior Master of the Queen's Bench Division of the High Court for onward transmission to the Court of Justice of the European Union. The order should be marked for the attention of Mrs Isaac and sent to the Senior Master:

c/o Queen's Bench Division Associates Dept
Room WG03
Royal Courts of Justice
Strand
London
WC2A 2LL

75A.2 There is no longer a requirement that the relevant court file be sent to the Senior Master. The parties should ensure that all appropriate documentation is sent directly to the European Court at the following address:
The Registrar
Court of Justice of the European Union
Kirchberg
L-2925 Luxemburg

75A.3 There is no prescribed form for use but the following details must be included in the back sheet to the order:

i. Solicitor's full address;
ii. Solicitor's and Court references;
iii. Solicitor's e-mail address.

75A.4 The European Court of Justice regularly updates its Recommendation to national courts and tribunals in relation to the initiation of preliminary ruling proceedings. The current Recommendation is 2012/C 338/01: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF

75A.5 The referring court may request the Court of Justice of the European Union to apply its urgent preliminary ruling procedure where the referring court's proceedings relate to a person in custody. For further information see Council Decision 2008/79/EC [2008] OJ L24/42: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:024:0042:0043:EN:PDF

75A.6 Any such request must be made in a document separate from the order or in a covering letter and must set out:

iv. The matters of fact and law which establish the urgency;
v. The reasons why the urgent preliminary ruling procedure applies; and
vi. In so far as possible, the court's view on the answer to the question referred to the Court of Justice of the European Union for a preliminary ruling.

75A.7 Any request to apply the urgent preliminary ruling procedure should be filed with the Senior Master as described above.

XI Costs

Part 76 Costs

Reference should be made to the Practice Direction (Costs in Criminal Proceedings).

XII General Application

CPD XII General application A: COURT DRESS

A.1 In magistrates' courts, advocates appear without robes or wigs. In all other courts, Queen's Counsel wear a short wig and a silk (or stuff) gown over a court coat with bands, junior counsel wear a short wig and stuff gown with bands. Solicitors and other advocates authorised under the Courts and Legal Services Act 1990 wear a black solicitor's gown with bands; they may wear short wigs in circumstances where they would be worn by Queen's Counsel or junior counsel.

A.2 High Court Judges hearing criminal cases may wear the winter criminal robe year-round. However, scarlet summer robes may be worn.

CPD XII General application B: MODES OF ADDRESS AND TITLES OF JUDGES AND MAGISTRATES

Modes of Address

B.1 The following judges, when sitting in court, should be addressed as 'My Lord' or 'My Lady', as the case may be, whatever their personal status:

(a) Judges of the Court of Appeal and of the High Court;
(b) any Circuit Judge sitting as a judge of the Court of Appeal (Criminal Division) or the High Court under section 9(1) of the Senior Courts Act 1981;
(b) any judge sitting at the Central Criminal Court;
(c) any Senior Circuit Judge who is an Honorary Recorder.

B.2 Subject to the paragraph above, Circuit Judges, qualifying judge advocates, Recorders and Deputy Circuit Judges should be addressed as 'Your Honour' when sitting in court.

District Judges (Magistrates' Courts) should be addressed as "Sir [or Madam]" or "Judge" when sitting in Court.

Magistrates in court should be addressed through the Chairperson as "Sir[or Madam]" or collectively as "Your Worships".

Description

B.3 In cause lists, forms and orders members of the judiciary should be described as follows:

(a) Circuit Judges, as 'His [or Her] Honour Judge A'.

When the judge is sitting as a judge of the High Court under section 9(1) of the Senior Courts Act 1981, the words 'sitting as a judge of the High Court' should be added;

(b) Recorders, as 'Mr [or Mrs, Ms or Miss] Recorder B'.

This style is appropriate irrespective of any honour or title which the recorder might possess, but if in any case it is desired to include an honour or title, the alternative description, 'Sir CD, Recorder' or 'The Lord D, Recorder' may be used;

(c) Deputy Circuit Judges, as 'His [or Her] Honour EF, sitting as a Deputy Circuit Judge'.

(d) qualifying judges advocates, as 'His [or Her] Honour GH, sitting as a qualifying judge advocate.'

(e) District Judges (Magistrates' Courts), as "District Judge (Magistrates' Courts) J"

CPD XII General application C: AVAILABILITY OF JUDGMENTS GIVEN IN THE COURT OF APPEAL AND THE HIGH COURT

C.1 For cases in the High Court, reference should be made to Practice Direction 40E, the supplementary Practice Direction to the Civil Procedure Rules Part 40.

C.2 For cases in the Court of Appeal (Criminal Division), the following provisions apply.

Availability of reserved judgments before handing down, corrections and applications consequential on judgment

C.3 Where judgment is to be reserved the Presiding Judge may, at the conclusion of the hearing, invite the views of the parties' legal representatives as to the arrangements to be made for the handing down of the judgment.

C.4 Unless the court directs otherwise, the following provisions apply where the Presiding Judge is satisfied that the judgment will attract no special degree of confidentiality or sensitivity.

C.5 The court will provide a copy of the draft judgment to the parties' legal representatives about three working days before handing down, or at such other time as the court may direct. Every page of every judgment which is made available in this way will be marked "Unapproved judgment: No permission is granted to copy or use in court." The draft is supplied in confidence and on the conditions that:

(a) neither the draft judgment nor its substance will be disclosed to any other person or used in the public domain; and

(b) no action will be taken (other than internally) in response to the draft judgment, before the judgment is handed down.

C.6 Unless the parties' legal representatives are told otherwise when the draft judgment is circulated, any proposed corrections to the draft judgment should be sent to the clerk of the judge who prepared the draft (or to the associate, if the judge has no clerk) with a copy to any other party's legal representatives, by 12 noon on the day before judgment is handed down.

C.7 If, having considered the draft judgment, the prosecution will be applying to the Court for a retrial or either party wishes to make any other application consequent on the judgment, the judge's clerk should be informed with a time estimate for the application by 12 noon on the day before judgment is handed down. This will enable the court to make appropriate listing arrangements and notify advocates to attend if the court so requires. There is no fee payable to advocates who attend the hand down hearing if not required to do so by the court. If either party is considering applying to the Court to certify a point for appeal to the Supreme Court, it would assist if the judge's clerk could be informed at the same time, although this is not obligatory as under section 34 of the Criminal Appeal Act 1968, the time limit for such applications is 28 days.

Communication to the parties including the defendant or the victim

C.8 The contents are not to be communicated to the parties, including to the defendant, respondent or the victim (defined as a person entitled to receive services under the Code of Practice for Victims of Crime) until two hours before the listed time for pronouncement of judgment.

C.9 Judges may permit more information about the result of a case to be communicated on a confidential basis to the parties including to the defendant, respondent or the victim at an earlier stage if good reason is shown for making such a direction.

C.10 If, for any reason, the parties' legal representatives have special grounds for seeking a relaxation of the usual condition restricting disclosure to the parties, a request for relaxation of the condition may be made informally through the judge's clerk (or through the associate, if the judge has no clerk).

C.11 If the parties or their legal representatives are in any doubt about the persons to whom copies of the draft judgment may be distributed they should enquire of the judge or Presiding Judge.

C.12 Any breach of the obligations or restrictions in this section or failure to take reasonable steps to ensure compliance may be treated as contempt of court.

Restrictions on disclosure or reporting

C.13 Anyone who is supplied with a copy of the handed-down judgment, or who reads it in court, will be bound by any direction which the court may have given in a child case under section 39 of the Children and Young Persons Act 1933, or any other form of restriction on disclosure, or reporting, of information in the judgment.

C.14 Copies of the approved judgment can be ordered from the official shorthand writers, on payment of the appropriate fee. Judgments identified as of legal or public interest

will generally be made available on the website managed by BAILLI: http://www.bailii.org/

CPD XII General Application D: CITATION OF AUTHORITY AND PROVISION OF COPIES OF JUDGMENTS TO THE COURT

D.1 This Practice Direction applies to all criminal matters before the Court of Appeal (Criminal Division), the Crown Court and the magistrates' courts. In relation to those matters only, Practice Direction (Citation of Authorities) [2012] 1 WLR 780 is hereby revoked.

CITATION OF AUTHORITY

D.2 In *R v Erskine; R v Williams* [2009] EWCA Crim 1425, [2010] 1 W.L.R. 183, (2009) 2 Cr. App. R. 29 the Lord Chief Justice stated:

> 75. The essential starting point, relevant to any appeal against conviction or sentence, is that, adapting the well known aphorism of Viscount Falkland in 1641: if it is not *necessary* to refer to a previous decision of the court, it is *necessary* not to refer to it. Similarly, if it is not *necessary* to include a previous decision in the bundle of authorities, it is *necessary* to exclude it. That approach will be rigidly enforced.
>
> 76. It follows that when the advocate is considering what authority, if any, to cite for a proposition, only an authority which establishes the principle should be cited. Reference should not be made to authorities which do no more than either (a) illustrate the principle or (b) restate it.
>
> 78. Advocates must expect to be required to justify the citation of each authority relied on or included in the bundle. The court is most unlikely to be prepared to look at an authority which does no more than illustrate or restate an established proposition.
>
> 80. … In particular, in sentencing appeals, where a definitive Sentencing Guidelines Council guideline is available there will rarely be any advantage in citing an authority reached before the issue of the guideline, and authorities after its issue which do not refer to it will rarely be of assistance. In any event, where the authority does no more than uphold a sentence imposed at the Crown Court, the advocate must be ready to explain how it can assist the court to decide that a sentence is manifestly excessive or wrong in principle.

D.3 Advocates should only cite cases when it is necessary to do so; when the case identifies or represents a principle or the development of a principle. In sentencing appeals, other cases are rarely helpful, providing only an illustration, and this is especially true if there is a sentencing guideline. Unreported cases should only be cited in exceptional circumstances, and the advocate must expect to explain why such a case has been cited.

D.4 Advocates should not assume that because a case cited to the court is not referred to in the judgment the court has not considered it; it is more likely that the court was not assisted by it.

D.5 When an authority is to be cited, whether in written or oral submissions, the advocate should always provide the neutral citation followed by the law report reference.

D.6 The following practice should be followed:

i) Where a judgment is reported in the Official Law Reports (A.C., Q.B., Ch., Fam.) published by the Incorporated Council of Law Reporting for England and Wales or the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing) one of those two series of reports must be cited; either is equally acceptable. However, where a judgment is reported in the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing) that reference must be given in addition to any other reference. Other series of reports and official transcripts of judgment may only be used when a case is not reported, or not yet reported, in the Official Law Reports or the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing).

ii) If a judgment is not reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), but it is reported in an authoritative series of reports which contains a headnote and is made by individuals holding a Senior Courts qualification (for the purposes of section 115 of the Courts and Legal Services Act 1990), that report should be cited.

iii) Where a judgment is not reported in any of the reports referred to above, but is reported in other reports, they may be cited.

iv) Where a judgment has not been reported, reference may be made to the official transcript if that is available, not the handed-down text of the judgment, as this may have been subject to late revision after the text was handed down. Official transcripts may be obtained from, for instance, BAILLI (http://www.bailii.org/).

D.7 In the majority of cases, it is expected that all references will be to the Official Law Reports and the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing); it will be rare for there to be a need to refer to any other reports. An unreported case should not be cited unless it contains a relevant statement of legal principle not found in reported authority, and it is expected that this will only occur in exceptional circumstances.

PROVISION OF COPIES OF JUDGMENTS TO THE COURT

D.8 The paragraphs below specify whether or not copies should be provided to the court. Authorities should not be included for propositions not in dispute. If more

than one authority is to be provided, the copies should be presented in paginated and tagged bundles.

D.9 If required, copies of judgments should be provided either by way of a photocopy of the published report or by way of a copy of a reproduction of the judgment in electronic form that has been authorised by the publisher of the relevant series, but in any event-

i) the report must be presented to the court in an easily legible form (a 12-point font is preferred but a 10 or 11-point font is acceptable), and

ii) the advocate presenting the report must be satisfied that it has not been reproduced in a garbled form from the data source.

In any case of doubt the court will rely on the printed text of the report (unless the editor of the report has certified that an electronic version is more accurate because it corrects an error contained in an earlier printed text of the report).

D.10 If such a copy is unavailable, a printed transcript such as from BAILLI may be included.

Provision of copies to the Court of Appeal (Criminal Division)

D.11 Advocates must provide to the Registrar of Criminal Appeals, with their appeal notice, respondent's notice or skeleton argument, a list of authorities upon which they wish to rely in their written or oral submissions. The list of authorities should contain the name of the applicant, appellant or respondent and the Criminal Appeal Office number where known. The list should include reference to the relevant paragraph numbers in each authority. An updated list can be provided if a new authority is issued, or in response to a respondent's notice or skeleton argument. From time to time, the Registrar may issue guidance as to the style or content of lists of authorities, including a suggested format; this guidance should be followed by all parties. The latest guidance is available from the Criminal Appeal Office.

D.12 If the case cited is reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), the law report reference must be given after the neutral citation, and the relevant paragraphs listed, but copies should not be provided to the court.

D.13 If, exceptionally, reference is made to a case that is not reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), three copies must be provided to the Registrar with the list of authorities and the relevant appeal notice or respondent's notice (or skeleton argument, if provided). The relevant passages of the authorities should be marked or sidelined.

Provision of copies to the Crown Court and the magistrates' courts

D.14 When the court is considering routine applications, it may be sufficient for the court to be referred to the applicable legislation or to one of the practitioner texts. However, it is the responsibility of the advocate to ensure that the court is provided with the material that it needs properly to consider any matter.

D.15 If it would assist the court to consider any authority, the directions at paragraphs D.2 to D.7 above relating to citation will apply and a list of authorities should be provided.

D.16 Copies should be provided by the party seeking to rely upon the authority in accordance with Rule 37.12. This Rule is applicable in the magistrates' courts, and in relation to the provision of authorities, should also be followed in the Crown Court since courts often do not hold library stock. Advocates should comply with paragraphs D.8 to D.10 relating to the provision of copies to the court.

CPD XII General application E: PREPARATION OF JUDGMENTS: NEUTRAL CITATION

E.1 Since 11 January 2001 every judgment of the Court of Appeal, and of the Administrative Court, and since 14 January 2002 every judgment of the High Court, has been prepared and issued as approved with single spacing, paragraph numbering (in the margins) and no page numbers. In courts with more than one judge, the paragraph numbering continues sequentially through each judgment and does not start again at the beginning of each judgment. Indented paragraphs are not numbered. A unique reference number is given to each judgment. For judgments of the Court of Appeal, this number is given by the official shorthand writers, Merrill Legal Solutions (Tel: 020 7421 4000 ext.4036). For judgments of the High Court, it is provided by the Courts Recording and Transcription Unit at the Royal Courts of Justice. Such a number will also be furnished, on request to the Courts Recording and Transcription Unit, Royal Courts of Justice, Strand, London WC2A 2LL (Tel: 020 7947 7820), (e-mail: rcj.cratu@hmcts.gsi.gov.uk) for High Court judgments delivered outside London.

E.2 Each Court of Appeal judgment starts with the year, followed by EW (for England and Wales), then CA (for Court of Appeal), followed by Civ or Crim and finally the sequential number. For example, 'Smith v Jones [2001] EWCA Civ 10'.

E.3 In the High Court, represented by HC, the number comes before the divisional abbreviation and, unlike Court of Appeal judgments, the latter is bracketed: (Ch), (Pat), (QB), (Admin), (Comm), (Admlty), (TCC) or (Fam), as appropriate. For example, '[2002] EWHC 123 (Fam)', or '[2002] EWHC 124 (QB)', or '[2002] EWHC 125 (Ch)'.

E.4 This 'neutral citation', as it is called, is the official number attributed to the judgment and must always be used at least once when the judgment is cited in a later judgment. Once the judgment is reported, this neutral citation appears in front of the familiar citation from the law reports series. Thus: 'Smith v Jones [2001] EWCA Civ 10; [2001] QB 124; [2001] 2 All ER 364', etc.

E.5 Paragraph numbers are referred to in square brackets. When citing a paragraph from a High Court judgment, it is unnecessary to include the descriptive word in brackets: (Admin), (QB), or whatever. When citing a paragraph from a Court of Appeal judgment, however, 'Civ' or 'Crim' is included. If it is desired to cite more than one paragraph of a judgment, each numbered paragraph should be enclosed

with a square bracket. Thus paragraph 59 in Green v White [2002] EWHC 124 (QB) would be cited: 'Green v White [2002] EWHC 124 at [59]'; paragraphs 30 – 35 in Smith v Jones would be 'Smith v Jones [2001] EWCA Civ 10 at [30] – [35]'; similarly, where a number of paragraphs are cited: 'Smith v Jones [2001] EWCA Civ 10 at [30], [35] and [40 – 43]'.

E.6 If a judgment is cited more than once in a later judgment, it is helpful if only one abbreviation is used, e.g., 'Smith v Jones' or 'Smith's case', but preferably not both (in the same judgment).

CPD XII General application F: CITATION OF HANSARD

F.1 Where any party intends to refer to the reports of Parliamentary proceedings as reported in the Official Reports of either House of Parliament ("Hansard") in support of any such argument as is permitted by the decisions in *Pepper v Hart* [1993] AC 593 and *Pickstone v Freemans PLC* [1989] AC 66, or otherwise, he must, unless the court otherwise directs, serve upon all other parties and the court copies of any such extract, together with a brief summary of the argument intended to be based upon such extract. No other report of Parliamentary proceedings may be cited.

F.2 Unless the court otherwise directs, service of the extract and summary of the argument shall be effected not less than 5 clear working days before the first day of the hearing, whether or not it has a fixed date. Advocates must keep themselves informed as to the state of the lists where no fixed date has been given. Service on the court shall be effected by sending three copies to the Registrar of Criminal Appeals, Royal Courts of Justice, Strand, London, WC2A 2LL or to the court manager of the relevant Crown Court centre, as appropriate. If any party fails to do so, the court may make such order (relating to costs or otherwise) as is, in all the circumstances, appropriate.

XIII Listing

SAVED PROVISIONS

from the Consolidated Criminal Practice Direction of 8 July 2002 ([2002] 1 W.L.R. 2870; [2002] 3 All E.R. 904; [2002] 2 Cr. App. R. 35), as amended

III.21 CLASSIFICATION OF CROWN COURT BUSINESS AND ALLOCATION TO CROWN COURT CENTRES

IV.33 ALLOCATION OF BUSINESS WITHIN THE CROWN COURT

IV.31 TRANSFER OF CASES FROM ONE CIRCUIT TO ANOTHER

IV.32 TRANSFER OF PROCEEDINGS BETWEEN LOCATIONS OF THE CROWN COURT

IV.38 APPLICATIONS FOR REPRESENTATION ORDERS

IV.41.9 MANAGEMENT OF CASES TO BE HEARD IN THE CROWN COURT (paragraph 9 only)

Annex F

Case management forms

Annex E forms

Forms other than case management forms

Annex D forms

Glossary

Glossary of terms used in The Criminal Procedure Rules 2013

Glossary of terms and the related rule-numbers