

# CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 9<sup>th</sup> DECEMBER, 2022 at 1.30 p.m.

MINISTRY OF JUSTICE  
102 PETTY FRANCE, LONDON SW1  
and by video conference

## MINUTES

### Present

#### *Committee members*

Lord Justice Holroyde	Court of Appeal judge; deputy chairman of the Committee; chairman of the meeting
Lord Justice William Davis	Court of Appeal judge
Mrs Justice Foster	High Court judge
HH Judge Field KC	Circuit judge
HH Judge Norton	Circuit judge
Michael Snow	District Judge (Magistrates' Courts)
Louise Bryant	Lay justice
Max Hill KC	Director of Public Prosecutions
Paul Jarvis	Barrister
Nicholas Ephgrave	National Police Chiefs' Council

#### *Guests*

Mrs Justice McGowan	Practice directions review group
Professor David Ormerod KC	University College, London
Nishat Tasnim	Ministry of Justice
Lily Sullivan	Ministry of Justice

### **Agenda item 1: welcome, announcements, apologies**

The chairman welcomed all those attending, in person and by video conference; in particular Mrs Justice McGowan, attending for the discussion of agenda item 6, and Nishat Tasnim and Lily Sullivan, of the Ministry of Justice, attending to present agenda item 2.

Apologies for absence were received from Alison Pople KC, Shade Abiodun, Edmund Smyth and Ed Lidington.

### **Agenda item 2: the CJS delivery data dashboard**

The Committee was introduced to the new design of the publication at <https://criminal-justice-delivery-data-dashboards.justice.gov.uk/> which would become available to the public in February, and shown how information could be extracted and displayed in different arrangements to suit the user.

### **Agenda item 3: draft minutes of the meeting on 11<sup>th</sup> November, 2022**

The minutes were adopted, subject to any corrections to be notified by members to the secretary.

### **Agenda item 4: case management group report**

Mrs Justice Foster reported that the group had discussed:

- 1) a revision of a draft form of application for a live link direction. The group had (a) directed some redistribution of the content between the main body of the form and its confidential annexe, (b) discussed the desirability of allowing for a conditional direction where the direction would allow participation from abroad and the disposition of the other jurisdiction concerned was not yet known, and (c) requested a report of further anticipated discussion with representatives of the UK Central Authority.
- 2) amendments to the magistrates' courts Preparation for Effective Trial form. The group had (a) approved in principle adjustments the better to record a defendant's choice to use Welsh or English at trial, and (b) agreed in principle that the form should include an appropriate warning and appropriate requests for information where the use of a live link for participation from abroad was sought.
- 3) potential amendments to the rule about an application by a defendant for the transfer of a legal aid order to another representative. The group had agreed in principle with what was proposed and directed the submission of the proposal to the next Committee meeting.

### **Agenda item 5 (paper (22)89): signature of the Criminal Procedure (Amendment) Rules 2023**

Each member attending indicated assent to the statutory instrument (Lord Justice Holroyde, Lord Justice William Davis, Mrs Justice Foster, HH Judge Field KC, HH Judge Norton, District Judge (Magistrates' Courts) Snow, Mrs Bryant, the Director of Public Prosecutions, Mr Jarvis and Assistant Commissioner Ephgrave). Those absent had indicated their assent separately (the Lord Chief Justice, Mr Lidington, Ms Pople KC, Ms Abiodun and Mr Smyth).

### **Agenda item 6 (paper (22)90): Criminal Practice Directions 2022**

The Committee thanked the practice directions review group for its work and for its replies to Committee members' and others' previous observations.

In response to the review group's proposals for the omission from Practice Directions of the provisions listed at paragraph 6 of paper (22)90 and their incorporation in rules, the Committee:

- 1) agreed to incorporate in rules the current provision for:
  - (a) medical certificates (CrimPD 2015 I 5C);
  - (b) first appearance in custody (CrimPD 2015 II 7A);
  - (c) magistrates' legal advisers (CrimPD VI 24A);
  - (d) timetabling of pre-trial recording of cross-examination, to the extent needed to provide a procedural framework for magistrates' courts as well as for the Crown Court (CrimPD 2022 6.2);
  - (e) binding over, etc. (CrimPD 2015 VII J); and
  - (f) contempt in the face of a magistrates' court (CrimPD 2015 XI 48A).

- 2) asked the review group to reconsider the proposal to omit in its entirety from practice directions the current provision for trial adjournment in magistrates' courts (CrimPD 2015 VI 24C).

In response to the review group's questions listed at paragraph 4 of paper (22)90, the Committee:

- 1) concurred in the review group's proposal to restore to the Practice Directions the abbreviated directions about intermediaries set out in annexe (22)90(c).
- 2) concurred in the inclusion in the table at CrimPD 2022 2.6.27 of an entry for "means forms".
- 3) asked HM Courts and Tribunals Service to advise on its capacity to inform sureties of all hearing dates, as would be required by CrimPD 2022 4.1.6.
- 4) asked the review group to reconsider and clarify the provision for pre-sentence reports in CrimPD 2022 5.2.
- 5) agreed to include in rules a requirement in the Crown Court to make an audio recording of an application for an investigation or warrant.

In response to a further question about the clarity and consistency of CrimPD 2022 2.2.8 and 6.3.71, the Committee asked the review group to reconsider those paragraphs.

(References above to the Criminal Practice Directions 2022 are to the text that the Committee received as annexe (22)90(b).)

#### **Agenda item 7 (paper (22)91): Law Commission report on confiscation**

The Committee discussed the report; expressed caution about the sufficiency of its own resources to implement, and investigators' resources to comply with, the relevant recommendations; and reached the following provisional conclusions in respect of the five topics identified in paper (22)91:

- 1) timetable and information requirements. Draft timetabling rules should be prepared for discussion, but flexibility in any default timetable would be required and flexibility in provision for when that timetable should be discussed and imposed by the court.
- 2) early resolution of confiscation. The jurisdiction of the court, and hence the legislative competence of the Criminal Procedure Rules, to impose a procedure on what would be essentially a voluntary negotiation was doubtful. The preparation of draft rules should be approached cautiously.
- 3) benefit. A requirement for a defendant promptly to make any assertion that benefit had been shared with another would be valuable. The Commission's suggested compendium of case law and principles was highly desirable but the Committee doubted whether Criminal Procedure Rules would prove an appropriate or practicable location.
- 4) recoverable amount. A requirement for explanation to the defendant would be valuable. The Committee again doubted whether Criminal Procedure Rules would prove an appropriate or practicable location for the Commission's suggested summary of the principles applicable to the treatment of assets held jointly by the defendant and others.
- 5) restraint proceedings. Draft rules should be prepared for discussion, with a paper rehearsing the arguments that had been offered for and against the Commission's proposals on costs.

**Agenda item 8: other business**

The chairman thanked members for their work throughout the past year and wished them well for Christmas and the year to come.

No other business was raised.

**Dates of next meetings**

Friday 3<sup>rd</sup> February, 2023, and  
Friday 17<sup>th</sup> March, 2023.

The meeting closed at 3.50pm