

CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 14th JULY, 2023 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)
Alison Pople KC	Barrister
Shade Abiodun	Solicitor
Edmund Smyth	Solicitor
Chief Constable Rob Nixon QPM	National Police Chiefs' Council

Guests

Professor Penney Lewis	Law Commission
Charlotte Daintith	Law Commission
Yasmin Ilhan	Law Commission
Lawrence McNamara	Law Commission
Professor David Ormerod KC	University College, London
Chloe Wood	Ministry of Justice
Hannah Bowers	Ministry of Justice
Danny Fischbach	CJS Common Platform Programme

Agenda item 1: welcome, announcements, apologies

The chairman welcomed all those attending, in person and by video conference. He welcomed in particular Chief Constable Rob Nixon QPM, whose appointment to the Committee he had announced on the previous occasion; Professor Lewis, Charlotte Daintith, Yasmin Ilhan and Lawrence McNamara of the Law Commission, attending for the discussion of item 10; Chloe Wood and Hannah Bowers of the Ministry of Justice, attending for the discussion of item 4; and Danny Fischbach of the CJS Common Platform Programme. He reported the appointment to the Committee of David Barrand JP with effect from 1st September, and reported the steps being taken to fill other Committee vacancies. He drew members' attention to the recently announced appointment of former Assistant Commissioner Ephgrave, a former

Committee member, as the next Director of the Serious Fraud Office; and to the publication of the most recent amendments to the Criminal Procedure Rules.

Apologies for absence were received from Louise Bryant, the Director of Public Prosecutions, Paul Jarvis and the Chief Magistrate.

Agenda item 2: draft minutes of the meeting on 9th June, 2023

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

Agenda item 3: case management group report

Mrs Justice Foster reported that the group had discussed:

- 1) amendments to the forms of application to vary behaviour orders in order to accommodate pending rule amendments, paying attention in particular to making it clear in the forms that in some circumstances the court might dismiss an application without a hearing and that the content of the form itself would constitute those representations which in those circumstances an applicant was entitled to make.
- 2) amendments to the form of application to change solicitor in order to accommodate pending rule amendments, paying attention in particular to the terms in which the meaning and effect of waiver of legal professional privilege was explained.
- 3) amendments to the form of application for reconsideration by magistrates of bail granted by a police officer, to clarify the information required for the purposes of court record keeping.
- 4) a revised form of general application to the High Court in extradition appeal proceedings. Group members had had no substantial observations to make but had suggested that members of the Defence Extradition Lawyers Forum be asked to comment.

Agenda item 4 (paper (23)47): IDVAs and ISVAs

The Committee:

- 1) discussed the amended draft provision;
- 2) agreed that rules should distinguish between advisors, on the one hand, and other witness companions on the other, with a general rule (a strong presumption) in favour of allowing an advisor to sit with or near the witness;
- 3) agreed that rules should require advisors to identify themselves to the court even if a party or other participant already had, or should have, done so;
- 4) agreed that advising the witness on how to answer questions should be prohibited explicitly; and
- 5) directed the preparation of a further revision for discussion at the next meeting.

Agenda item 5 (paper (23)48): sending for trial, committal for sentence, disposal of charges and sending back

The Committee discussed the difficulties identified. Members inclined to the view that such difficulties more frequently were attributable to recording errors than to

substantive errors by the court. It was reported that a number of appeals and applications for judicial review touching upon this subject were due to be heard later this month at a joint sitting of the Court of Appeal, criminal division, and of the Administrative Court. The Committee directed that a rule should be devised to govern rectification of a magistrates' court's records; for discussion at the next meeting, and taking into account the outcome of the imminent cases.

Agenda item 6 (paper (23)49): embargoed draft rulings in the Crown Court

The Committee discussed current practice and the circumstances in which in the Crown Court a ruling might be issued in draft. The chairman reported that the Lord Chief Justice would prefer to review with other heads of division the provision made by practice directions for civil, family and criminal cases rather than asking each procedure rule committee to devise its own provision. The Committee agreed.

Agenda item 7 (paper (23)50): incorporating disclosure practice in rules

The Committee discussed the proposed provision and the difficulties which it had been devised to address. Members noted the volume of guidance already available. Views differed on the desirability of yet more procedural provision. It was reported that Home Office officials anticipated the preparation of a summary of disclosure obligations in the near future. The Committee agreed in principle to consider at the next meeting abbreviated provision dealing only with the procedure that should follow service of a disclosure management document where the prosecutor chose to serve such a document.

Agenda item 8 (paper (23)51): expert witness' declaration of truth

The Committee endorsed the proposed practice direction amendment, but subject to an addition requiring details of any non-compliance with a relevant code, and details of any mitigating steps taken, all to be listed together in a schedule or annexe to the expert's report.

Agenda item 9 (paper (23)52): private prosecution costs

The Committee noted the events the subject of the judgment concerned, observing that the rule now in force required more information for the trial court than then had been the case.

Agenda item 10 (paper (23)53): contempt of court

Professor Lewis described the scope of and timetable for the Law Commission project. A consultation paper would be published in due course but in the meantime observations would be welcomed, by email to contempt-of-court@lawcommission.gov.uk or by telephone at 0203 334 0200.

The Committee discussed difficulties arising from:

- 1) uncertainty in the substantive law of contempt;
- 2) uncertainty as to the powers of court security officers;
- 3) uncertainty over the distinction between contempt in the face of the court that ought to be dealt with at once and such contempt that ought to be referred to the Law Officers; and

- 4) the lack of clarity in current rules about the responsibility for producing and serving on an alleged contemnor a statement of the alleged contempt.

The Committee directed the convening of a working group to review current rules, in the light of points 3 and 4 especially.

Agenda item 11 (paper (23)54): rules to accommodate the Retained EU Law (Revocation and Reform) Act 2023

The Committee hoped for assistance with, in particular, the adoption of time limits for applications that would be consistent among the different jurisdictions and courts affected.

Agenda item 12: other business

This having been the last Committee meeting to take place under the superintendence of the present Lord Chief Justice, the chairman recorded members' gratitude to Lord Burnett for his support, advice and guidance, and for his own work on new rules and practice directions; and reported Lord Burnett's gratitude to each Committee member for the Committee's work and achievements.

Dates of next meetings

Friday 6th October, 2023, and
Friday 10th November, 2023.

The meeting closed at 3.15pm