

CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 6th OCTOBER, 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)
David Barrand	Magistrate
Max Hill KC	Director of Public Prosecutions
Alison Pople KC	Barrister
Paul Jarvis	Barrister
Shade Abiodun	Solicitor
Edmund Smyth	Solicitor
Rebecca White	Voluntary organisation representative
Robert Thomas	Voluntary organisation representative

Guests

Professor David Ormerod KC	University College, London
Professor Cheryl Thomas KC	University College, London
Julie Tyler	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 (in her absence at this meeting) the Committee's new chairman, the Lady Chief Justice; David Barrand JP, the new magistrate member of the Committee; and Rebecca White and Robert Thomas, the new voluntary organisation members. He welcomed also Professor Thomas KC, attending for the discussion of agenda item 8, and Julie Tyler of the CJS Common Platform Programme.

Apologies for absence were received from Chief Constable Rob Nixon QPM.

Agenda item 2: draft minutes of the meeting on 14th July, 2023

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

Matters arising were:

- 1) from July item 4 (IDVAs and ISVAs), further revised draft rules would be submitted to the next Committee meeting, in November.
- 2) from July item 5 (sending for trial, committal for sentence, etc.), a paper in preparation by the Chief Magistrate would be presented to the next Committee meeting. It was reported that two material judgments had been handed down in the Court of Appeal and Divisional Court that morning.
- 3) from July item 6 (embargoed draft judgments) it was reported that difficulties arose now regularly in relation to the circulation of draft judgments of District Judges (Magistrates' Courts) in extradition cases.
- 4) from July item 10 (contempt of court), an initial discussion had taken place with judicial members of the working group and a further discussion had been held at today's case management group meeting.

Agenda item 3: case management group report

Mrs Justice Foster reported that the group had discussed:

- 1) the potential preparation of an adapted magistrates' courts Preparation for Effective Trial form, for use in proceedings on the breach of community or comparable orders. The group had agreed that it would be worthwhile for such a form to be devised.
- 2) a revised draft form of notice of application for a serious disruption prevention order. The group had agreed that explanations for the defendant should be included of (i) what such an order was, and (ii) the potential consequences of its breach.
- 3) the potential desirability of a form of notice of application for a domestic abuse protection order. The group had agreed to await the completion of a draft form of application in civil proceedings, which was understood to be in preparation, and then to consider what adaptations to that form might be needed in criminal proceedings.
- 4) applications for overseas production orders for access to electronic data. The group had received a report that some applications, only, had been made thus far; others were anticipated; and the forms prepared for use in such applications would be reviewed in the light of further experience.
- 5) a proposed amendment to paragraph 5.15.6 of the Criminal Practice Directions to correct the omission of text describing the circumstances in which a District Judge (Magistrates' Court) must deal with allocation for trial in a youth court. The group had endorsed the request for the amendment.
- 6) steps to be taken in practice in the event of a contempt in the face of the court. The group had received a report of a judicial working group discussion and had agreed that further discussion, including representatives of the Attorney General's Office, should be convened.

Agenda item 4 (paper (23)56): the 2025 project

The Committee:

- 1) discussed the desirability of dealing with proceedings online by means of a system that would present relevant choices to the parties at each stage and

react to their responses, to be devised by a group that would include those with experience of the design of such systems and of web design generally; and

- 2) agreed to convene a working group to consider in detail the suggestions for reform listed in the paper and to make recommendations for the Committee to consider.

Agenda item 5 (paper (23)57): variation of condition of pre-charge bail

The Committee approved the proposed rule amendments.

Agenda item 6 (paper (23)58): disclosure

The Committee:

- 1) discussed again the difficulties which the draft rule amendments had been devised to address;
- 2) observed that the information about prosecution disclosure required by existing rule 15.2(2) occasionally was misplaced in the courts' electronic records;
- 3) expressed reservations about any procedural provision that might encourage dispute and delay, and might impede the proper operation of the statutory regime; and
- 4) directed the further revision and abbreviation of amended rule 15.2 accordingly.

Agenda item 7 (paper (23)59): defendant's evidence directions

The Committee approved the proposed omission of rules 18.14 to 18.17.

Agenda item 8 (paper (23)60): editing a video recording of cross-examination and re-examination

The Committee approved the proposed rule amendments, subject to the addition of a requirement to provide for the date by which any permitted editing should be carried out.

Agenda item 9 (paper (23)61): confiscation proceedings – timetabling and associated recommendations

The Committee:

- 1) discussed the questions raised by the paper;
- 2) expressed reservations about the desirability of any amendment to rule 25.16;
- 3) expressed reservations about the desirability of any default time limits for the steps listed in rule 33.13;
- 4) directed clarification of the requirement for the defendant to identify any third party interest;
- 5) directed clarification of the reference to disclosure;
- 6) agreed to abbreviate the proposed requirement for explanation to the defendant;
- 7) directed the revision and resubmission of the rule amendments accordingly; and

- 8) agreed to delegate preparation of the recommended summaries of case law to the working group due to be convened under agenda item 4.

Agenda item 10 (paper (23)62): restraint proceedings - recommendations about (i) access to funds, and (ii) costs

The Committee:

- 1) approved the amendment to rule 33.53, subject to amalgamation and simplification of draft sub-paragraphs 33.53(5)(c)(iii) and (iv);
- 2) approved the proposed removal of costs rules from Part 33 to Part 45; and
- 3) directed the substitution for draft sub-paragraph 45.7(6)(c) of:
“(c) on an application by the prosecutor to make, vary or discharge a restraint order the court must not order the prosecutor to pay the defendant’s costs unless—
 - (i) the defendant succeeds, or
 - (ii) the prosecutor acted unreasonably”.

Agenda item 11 (paper (23)63): rules to supplement the National Security Act 2023

The Committee approved the proposed amendments, subject to the corrections reported by the secretary.

Agenda item 12 (paper (23)64): live links in extradition proceedings

The Committee:

- 1) approved the amendment to rule 50.3(2), subject to simplification of the cross-reference to rules 3.35 to 3.39;
- 2) agreed that Criminal Procedure Rules could not resolve the question of whether foreign state authority for a live link was or was not required; and
- 3) agreed in principle that the rules in Part 3 or Part 50 should make it clear that it was the responsibility of the applicant for a live link to prepare any necessary draft letter of request to a foreign state.

Agenda item 13: other business

This having been the last Committee meeting at which Max Hill KC, the present Director of Public Prosecutions, was due to attend, the chairman recorded members’ gratitude to him for his participation throughout the 5 years of his membership since November, 2018.

Dates of next meetings

Friday 10th November, 2023; and
Friday 8th December, 2023.

The meeting closed at 3.40pm