

# CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 8<sup>th</sup> DECEMBER, 2023 at 1.30 p.m.

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

## MINUTES

### Present

#### *Committee members*

The Baroness Carr of Walton-on-the-Hill	Lady Chief Justice; chair of the Committee
Lord Justice Holroyde	Court of Appeal judge; deputy chair of the Committee
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
Amy McEvoy	Justices' legal adviser
Stephen Parkinson	Director of Public Prosecutions
Paul Jarvis	Barrister
Shade Abiodun	Solicitor
Edmund Smyth	Solicitor
Rebecca White	Voluntary organisation representative

#### *Guests*

Paul Goldspring	Senior District Judge, Chief Magistrate
Professor David Ormerod KC	University College, London
Danny Fischbach	CJS Common Platform Programme

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

The deputy chair welcomed all those attending, in person and by video conference. He welcomed in particular the Lady Chief Justice, the Committee's chair; and Amy McEvoy, recently appointed to the Committee. He welcomed also Danny Fischbach of the CJS Common Platform Programme.

The Lady Chief Justice introduced herself; recorded her gratitude to Committee members for their work; emphasised the importance of that work; and listed some of her aspirations for the rules.

Apologies for absence were received from Alison Pople KC, Chief Constable Rob Nixon QPM and Robert Thomas.

### **Agenda item 2: draft minutes of the meeting on 10<sup>th</sup> November, 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) a suggestion made by the authors of a recent publication, “Good Practice Guidance on Certificates for Assigned Advocate in the Youth Court”, that the youth court preparation for effective trial form should be used to submit a request for a determination that a defence advocate could be selected in addition to the defence legal representative. The group had:
  - (a) considered different means of encouraging the instruction of trained and experienced advocates; and
  - (b) agreed that (i) use of the youth court PET form would be appropriate for applications for such determinations, and (ii) the current form, and corresponding CJS Common Platform online arrangements, already would accommodate an application submitted as additional information at the end of paragraph 9 of the form, and a determination recorded at paragraph 12.10.
- 2) proposed amendments to the magistrates’ courts search warrant template forms presently authorised for use with the Criminal Procedure Rules. The group had agreed that the Lady Chief Justice should be asked to authorise the use of those amended substitutes.
- 3) a proposal for the creation of an adapted and simplified magistrates’ courts preparation for effective trial form for use in proceedings to which CrimPR Part 32 applied (Breach, revocation and amendment of community and other orders). The group had agreed in principle with the proposal; discussed the extent to which a new form could be simplified; and considered, without settling, the detail of its content.
- 4) a proposal for the creation of a form for use on committal for sentence from a magistrates’ court to the Crown Court to record important information, in particular for the benefit of the Probation Service in the preparation of a pre-sentence report. The group had considered (i) the extent to which required information already was collected and passed on, in some courts using the current sending for trial questionnaire, and (ii) the availability of relevant information from existing CJS Common Platform online arrangements. The group agreed to discuss the proposal again.

### **Agenda item 4 (paper (23)77): signature of the Criminal Procedure (Amendment) Rules 2024**

Each member attending indicated assent to the statutory instrument (The Lady Chief Justice, Lord Justice Holroyde, Lord Justice William Davis, Mrs Justice Foster, HH Judge Field KC, HH Judge Norton, District Judge (Magistrates’ Courts) Snow, Mr Barrand, Ms McEvoy, the Director of Public Prosecutions, Mr Jarvis, Ms Abiodun, Mr Smyth and Ms White). Those absent had indicated assent separately.

### **Agenda item 5 (oral report): first meeting of the 2025 project working group**

The deputy chair reported that the group had discussed:

- 1) the impossibility of reconciling simplicity with the accommodation of complex and changing legislation and had agreed in principle to maintain the balance present in current rules.
- 2) the desirability of creating more guides to criminal procedure for participants.
- 3) the desirability of indexing the rules.
- 4) the revision of those Parts of the Rules already identified for such abbreviation, among them Part 33 (the rules about confiscation).

The group had agreed to convene sub-groups to work on each of task numbers (2), (3) and (4) above.

### **Agenda item 6 (paper (23)78): new family and criminal disclosure protocol**

Committee members discussed the scope and application of the draft new protocol prepared by the Family Crime Interface Group. The Committee agreed that the protocol should apply, so far as relevant, to magistrates' courts, including youth courts and the extradition jurisdiction of District Judges (Magistrates' Courts), as well as to the Crown Court. Subject to resolution of how the new protocol best might be added to, or incorporated by reference in, the Criminal Practice Directions, it was agreed that the protocol should be given the force of law by means of those Practice Directions. It was suggested that consideration should be given to including in the Directions a list of all the protocols that now applied to the practice and procedure of criminal courts.

### **Agenda item 7 (papers (23)79, (19)03 & (19)13): sanctions**

In connection with potential sanctions for failure to comply with rules or directions Committee members discussed:

- 1) refusal to accept as effective an application made without the required supporting documents;
- 2) refusal to allow the introduction of evidence served out of time;
- 3) potential reduction in fees otherwise payable in the event of non-compliance;
- 4) the value of case progression officers where they were available;
- 5) the difficulty sometimes experienced in obtaining a response from the court office on making a report of non-compliance by another party; and
- 6) the desirability of an IT system automatic alert in the event of failure to comply with a direction. It was reported that the CJS Common Platform system would have had the capacity to issue such alerts as part of a 2024 directions management release, subject to ministerial approval, but the implementation of that capacity had been postponed.

### **Agenda item 8 (paper (23)80): use of animals as witness companions**

The Committee:

- 1) acknowledged opposing views, past and present, about admitting animals to court rooms and live link rooms;

- 2) understood there to be little controversy about the use of assistance dogs, for example a guide dog for a person with impaired vision, but acknowledged the occasional difficulty of distinguishing an assistance animal from a therapy or support animal;
- 3) acknowledged the potentially discriminatory effect of allowing a witness to be accompanied by a therapy or support animal as a measure akin to a special measure if not allowing a defendant or juror to be similarly accompanied;
- 4) agreed that it would assist courts if a rule or direction were to identify criteria to apply in deciding whether the presence of a companion animal should be allowed; and
- 5) directed that those responsible for the production of the Judicial College Equal Treatment Bench Book should be consulted.

### **Agenda item 9 (paper (23)81): confidential sentencing texts**

The Committee:

- 1) discussed the difficulties inherent in any arrangement under which a court took into account, in private, confidential information affecting a sentence passed;
- 2) agreed that magistrates' courts could, and occasionally did, receive confidential sentencing texts in much the same way as did the Crown Court;
- 3) agreed that guidance for courts was desirable to promote consistency but (i) doubted whether any very detailed rule was required or desirable, and (ii) agreed that provision governing the statutory procedure should be further separated from provision governing the confidential text procedure; and
- 4) directed the adjustment of the proposed amendments to rule 28.11:
  - (a) to retain only those applicable to the statutory procedure, and
  - (b) to remove to a separate rule a list of the information that should be included in a confidential sentencing text, which separate rule should prescribe nothing else.

### **Agenda item 10 (paper (23)82): Criminal Justice Bill**

Committee members noted the content of the Bill.

### **Agenda item 11: other business**

This having been the last Committee meeting to be attended before his retirement by Richard Chown of the Ministry of Justice, a founding Committee participant and for some years a Committee member, the deputy chair recorded members' gratitude to Richard and wished him well in his retirement.

### **Dates of next meetings**

Friday 2<sup>nd</sup> February, 2024, and  
Friday 15<sup>th</sup> March, 2024.

The meeting closed at 3.30pm.