

# CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 7<sup>th</sup> JUNE, 2024 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 chair of the Committee; chair 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
Amy McEvoy	Justices' legal adviser
Stephen Parkinson	Director of Public Prosecutions
Alison Pople KC	Barrister
Paul Jarvis	Barrister
Shade Abiodun	Solicitor
Edmund Smyth	Solicitor
Robert Thomas	Voluntary organisation representative

#### *Guests*

Michael Oliver	District Judge (Magistrates' Courts)
Professor David Ormerod KC	University College, London
Simon Bartlett and Amy Atkin	CJS Common Platform Programme

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

The chair welcomed all those attending, in person and by video conference.

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

### **Agenda item 2: draft minutes of the meeting on 26<sup>th</sup> April, 2024**

The draft minutes were adopted, subject to any corrections to be notified by members to the secretary. Arising from item 10 of the minutes (contempt of court) the chair reported that the most recent iteration of proposed amendments had been circulated to members of the senior judicial criminal justice group for their observations.

### **Agenda item 3: case management group report**

Mrs Justice Foster reported that the group had considered:

- 1) amended forms of application and appeal in relation to domestic abuse protection orders, these being refinements of forms considered at previous meetings. The group had discussed generally the terms in which those forms were expressed and had suggested some paragraph numbering and some abbreviation apt to the particular applicant or appellant for whom each form had been designed.
- 2) an amended form of application for a special measures direction, this again a refinement of a draft considered previously. It would be further adjusted, and then again tested and reviewed by CPS prosecutors.
- 3) the current notice of application for a production order, which the group had agreed should be amended to omit the sentence that raised an expectation of a hearing in the absence of a response.

No other form revision or other business had been raised.

### **Agenda item 4 (papers (24)29 & 30): signature of the Criminal Procedure (Amendment No. 2) Rules 2024**

Each member attending indicated assent to the statutory instrument amended as proposed in paper (24)30 (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, Ms Pople KC, Mr Jarvis, Ms Abiodun, Mr Smyth and Mr Thomas). The Lady Chief Justice and those other members absent had indicated assent separately. The chair explained that the statutory instrument now would be submitted to the Lord Chancellor after the general election and formation of a new government.

### **Agenda item 5 (paper (24)31): consolidation of rules about the extension of time**

The Committee considered the advantages and disadvantages of the suggested rearrangement of rules and preferred to maintain the present arrangement.

### **Agenda item 6 (paper (24)32): prosecutor's absence at trial in the Crown Court**

The Committee:

- 1) doubted that the principles applicable to adjournment in the Crown Court required more detailed incorporation in a rule;
- 2) agreed that rule 38.2 should be amended to accommodate circumstances in which the prosecution advocate was absent when a ruling susceptible to appeal was, or otherwise would have been, given; and
- 3) directed the preparation of a draft rule amendment accordingly.

### **Agenda item 7 (papers (24)33 & 38): pre-trial questioning of experts; reasons for outcome of joint discussion**

The Committee:

- 1) discussed the two questions raised;
- 2) as to pre-trial questioning of experts in the same manner as permitted in civil proceedings by CPR 35.6, concluded that the circumstances of criminal proceedings were sufficiently different to render such questioning potentially disruptive and potentially unfair to the defendant. The rules should not provide for such questioning. Commissioning parties should instruct experts not to

answer any such questions without first referring to the party from whom they had received instructions and potentially, through that party, to the court.

- 3) as to reasons for agreement as well as for disagreement between experts at a joint pre-trial discussion, concluded that in criminal proceedings the reasons for agreement, even if brief, might be material. Current rule 19.6 should not be changed.

**Agenda item 8 (papers (24)34 & 38): reference to “statement” in rule 20.2(1)(c)**

The Committee:

- 1) discussed the reasons for which the rule had been made in its present terms in 2012 and the ambiguity inherent in the requirements of section 117(1)(c) of the Criminal Justice Act 2003, which ambiguity the rules could not resolve and should not gloss;
- 2) directed the amendment of rule 20.2(1)(c) to provide “section 117(1)(c) (a statement prepared for the purposes of criminal proceedings)”, that being an acceptable abbreviation of the words appearing in section 117(4) of the Act; and
- 3) directed the amendment of the present form of notice of hearsay evidence correspondingly.

**Agenda item 9 (paper (24)35): variation of sentence – a recent judgment**

The Committee:

- 1) discussed the judgment in *Leitch*;
- 2) agreed that the judgment itself served to draw practitioners’ attention to the requirements of the law; and
- 3) invited the editors of the Judicial College *Crime eLetter* to draw attention to the judgment.

**Agenda item 10 (paper (24)36): appeal in relation to variation or discharge of domestic abuse protection order**

The Committee:

- 1) endorsed the proposed rule amendment; and
- 2) directed its inclusion in the draft Criminal Procedure (Amendment No. 2) Rules 2024, the subject of item 4.

**Agenda item 11: other business**

Mr Barrand described his preparation of a draft index to the Criminal Procedure Rules and asked for assistance in the review and enlargement of that draft. Volunteers were identified.

**Dates of next meetings**

Friday 12<sup>th</sup> July, 2024; and  
Friday 4<sup>th</sup> October, 2024.

The meeting closed at 2.55pm.