

CRIMINAL PROCEDURE RULE COMMITTEE

MEETING ON FRIDAY 4th OCTOBER, 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 Oliver	District Judge (Magistrates' Courts)
David Barrand	Magistrate
Amy McEvoy	Justices' legal adviser
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
Professor Penny Lewis	Law Commission
Lawrence McNamara	Law Commission
Yasmin Ilhan	Law Commission
Marianne Holbrook	Law Commission
Ruth McCauley-Heaney	HM Courts and Tribunals Service
Sara Lawson KC	Serious Fraud Office
Amy Atkin	CJS Common Platform Programme
Simon Bartlett	CJS Common Platform Programme

Agenda item 1: welcome, announcements, apologies

The chair welcomed all those attending, in person and by video conference. He welcomed in particular District Judge (Magistrates' Courts) Oliver attending for the first time as a Committee member; Professor Lewis, the Law Commissioner, and members of Law Commission staff, attending for the discussion of agenda item 9; and Ruth McCauley-Heaney, of HM Courts and Tribunals Service, attending for the discussion of agenda item 5.

He drew attention to the coming into force, with some exceptions, on Monday 7th October of the amendments made by the Criminal Procedure (Amendment No. 2) Rules 2024.

He reported apologies for absence from the Director of Public Prosecutions, Chief Constable Rob Nixon QPM and Robert Thomas.

Agenda item 2: draft minutes of the meeting on 12th July, 2024

The draft minutes were adopted, subject to any corrections to be notified by members to the secretary, and the draft note of discussion likewise.

Agenda item 3: case management group report

Mrs Justice Foster reported that the group had considered:

- 1) eight draft forms of application for production and other investigation orders made under the National Security Act 2023. Group members had suggested a number of adjustments to details which would be relayed to the forms' authors.
- 2) in members' capacity as the Rule Committee's civil rules consultative group, draft amendments to the Crown Court Rules 1982 and two associated new draft notices of appeal in connection with the detention, forfeiture and conversion of cryptoassets under the Economic Crime and Corporate Transparency Act 2022. Again, group members had suggested some adjustments to details which would be relayed to the authors.
- 3) a suggestion that the recently approved new form of application for a special measures direction should include a tick box by means of which the applicant should indicate that the application had been served on the other party as well as on the court. The group had noted that the court's jurisdiction to give a direction would be unaffected by non-service of the application, and that a direction could be later varied if necessary. After discussion the group had concluded, therefore, that it would be permissible for a court, or authorised court officer, when making a determination without a hearing to assume that service had been effected in accordance with the relevant rule (and instructions on the form) without further information to that effect.

Agenda item 4 (paper (24)48): time of service by email on the last day of a statutory time limit

The Committee:

- 1) agreed that no prejudice could be occasioned by service during the evening of a non-business day on which a statutory time limit expired;
- 2) preferred to a rule that listed individual such statutory provisions a rule expressed in terms applicable to all such provisions generally; and
- 3) directed the preparation of a draft such rule for consideration at the next meeting.

Agenda item 5 (paper (24)49): notice to media representatives of applications for reporting restrictions

The Committee:

- 1) discussed at length:
 - (a) the circumstances in which notice of a proposed application would be required,
 - (b) the means by which the proper recipients of such a notice could be identified, and
 - (c) the potentially disproportionate consequences of adjournment merely to permit notice of an application where a restriction could be reconsidered later; and
- 2) directed the preparation of detailed draft rule amendments for consideration at the next meeting, with a note of the issues raised during this discussion.

Agenda item 6 (paper (24)50): application to withdraw guilty plea

The Committee noted with interest the Crown Court ruling the subject of this note.

Agenda item 7 (paper (24)51): order for access to bank documents

The Committee:

- 1) discussed the judgment and the considerations to which the paper referred; and
- 2) directed the preparation of draft amendments to rules and forms for consideration at the next meeting.

Agenda item 8 (paper (24)52): magistrates' courts powers where defendant unfit to be tried

The Committee:

- 1) discussed the difficulties and disadvantages of the existing statutory provision and urged the introduction of such primary legislation as that recommended by the Law Commission in 2016;
- 2) remarked the particular difficulty occasioned by the level of fees payable for expert medical assessments and reports, the rates for which had remained unchanged for many years; and
- 3) agreed that no changes to procedure rules within the current statutory framework would materially improve the present unsatisfactory state of affairs.

Agenda item 9 (paper (24)53): Law Commission consultation on contempt of court

The Committee:

- 1) received a presentation by Professor Lewis, who drew attention to the principal features of the Commission's procedural proposals, while emphasising that the consultation paper also invited views on potential changes to substantive law; and
- 2) discussed:
 - (a) the potential tension between (i) an alleged contemnor's right to a fair trial, including sufficient time to prepare for trial and an impartial tribunal, and (ii) considerations, including the court's authority and control over proceedings, that might favour a prompt final disposal,
 - (b) the difficulties, under current law, of ensuring the return for trial of an alleged contemnor who had been released in the meantime, and

- (c) the potential value of restraint of an alleged contemnor's behaviour pending trial, by bail conditions or similar.

Agenda item 10 (paper (24)54): contempt by obstruction, disruption, etc., amendments to current rules

The Committee:

- 1) discussed the history of, and reasons for, the rule amendments now proposed, and received a report that guidance for magistrates' courts was approaching completion;
- 2) agreed that the draft rules should include a reference to the court's power under section 9(3), Contempt of Court Act 1981 to forfeit and dispose of an instrument for recording sound that had been brought into court; and
- 3) subject to that adjustment and to final approval by the Lady Chief Justice, approved the draft rules.

Agenda item 11 (paper (24)55): index to the Criminal Procedure Rules

The Committee:

- 1) received Mr Barrand's report of progress with the preparation of the draft index;
- 2) expressed its gratitude to Mr Barrand, in particular, and to those who had assisted him; and
- 3) discussed arrangements for further consultation.

Agenda item 12: other business

It was suggested that CrimPR 30.5(1)(a) should be amended to allow a defendant to apply to a magistrates' court for the reduction of a fine or for the variation of payment terms despite the existence of a collection order. The Committee directed the preparation of an explanatory paper and draft rule amendment for consideration at the next meeting

Dates of next meetings

Friday 8th November, 2024, and

Friday 13th December, 2024 (at which the next Amendment Rules would be signed).

The meeting closed at 3.30pm.