CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION I

GENERAL MATTERS

Contents of this Division

CrimPR Part 1 The overriding objective

CPD I General matters 1A: THE OVERRIDING OBJECTIVE

1A.1 The presumption of innocence and an adversarial process are essential features of English and Welsh legal tradition and of the defendant's right to a fair trial. But it is no part of a fair trial that questions of guilt and innocence should be determined by procedural manoeuvres. On the contrary, fairness is best served when the issues between the parties are identified as early and as clearly as possible. As Lord Justice Auld noted, a criminal trial is not a game under which a guilty defendant should be provided with a sporting chance. It is a search for truth in accordance with the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculpate himself, the object being to convict the guilty and acquit the innocent.

1A.2 Further, it is not just for a party to obstruct or delay the preparation of a case for trial in order to secure some perceived procedural advantage, or to take unfair advantage of a mistake by someone else. If courts allow that to happen it damages public confidence in criminal justice. The Rules and the Practice Directions, taken together, make it clear that courts must not allow it to happen.

1A.3 The Criminal Procedure Rules and the Criminal Practice Directions are the law. Together they provide a code of current practice that is binding on the courts to which they are directed, and which promotes the consistent administration of justice. Participants must comply with the Rules and Practice Direction, and directions made by the court, and so it is the responsibility of the courts and those who participate in cases to be familiar with, and to ensure that these provisions are complied with.

CrimPR Part 3 Case management

CPD I General matters 3A: CASE MANAGEMENT

3A.1 CrimPR 1.1(2)(e) requires that cases be dealt with efficiently and expeditiously. CrimPR 3.2 requires the court to further the overriding objective by actively managing the case, for example:

a) When dealing with an offence which is triable only on indictment the court must ask the defendant whether he or she intends to plead guilty at the Crown Court (CrimPR 9.7(5));
b) On a guilty plea, the court must pass sentence at the earliest opportunity, in accordance with CrimPR 24.11(9)(a) (magistrates' courts) and 25.16(7)(a) (the Crown Court).

3A.2 Given these duties, magistrates' courts and the Crown Court therefore will proceed as described in paragraphs 3A.3 to 3A.28 below. The parties will be expected to have prepared in accordance with CrimPR 3.3(1) to avoid unnecessary and wasted hearings. They will be expected to have communicated with each other by the time of the first hearing; to report to the court on that communication at the first hearing; and to continue thereafter to communicate with each other and with the court officer, in accordance with CrimPR 3.3(2).

3A.3 There is a Preparation for Effective Trial form for use in the magistrates' courts, and a Plea and Trial Preparation Hearing form for use in the Crown Court, each of which must be used as appropriate in connection with CrimPR Part 3: see paragraph 5A.2 of these Practice Directions. Versions of those forms in pdf and Word, together with guidance notes, are available on the Criminal Procedure Rules pages of the Ministry of Justice website.

Case progression and trial preparation in magistrates' courts

3A.4 CrimPR 8.3 applies in all cases and requires the prosecutor to serve:

i. a summary of the circumstances of the offence;
ii. any account given by the defendant in interview, whether contained in that summary or in another document;
iii. any written witness statement or exhibit that the prosecutor then has available and considers material to plea or to the allocation of the case for trial or sentence;
iv. a list of the defendant's criminal record, if any; and
v. any available statement of the effect of the offence on a victim, a victim's family or others.

The details must include sufficient information to allow the defendant and the court at the first hearing to take an informed view:

i. on plea;
ii. on venue for trial (if applicable);
iii. for the purposes of case management; or
iv. for the purposes of sentencing (including committal for sentence, if applicable).

Defendant in custody

3A.5 If the defendant has been detained in custody after being charged with an offence which is indictable only or triable either way, at the first hearing a magistrates' court will proceed at once with the allocation of the case for trial, where appropriate, and, if so required, with the sending of the defendant to the Crown Court for trial. The court will be expected to ask for and record any indication of plea and issues for trial to assist the Crown Court.

3A.6 If the offence charged is triable only summarily, or if at that hearing the case is allocated for summary trial, the court will forthwith give such directions as are necessary, either (on a guilty plea) to prepare for sentencing, or for a trial.

Defendant on bail

3A.7 If the defendant has been released on bail after being charged, the case must be listed for the first hearing 14 days after charge, or the next available court date thereafter when the prosecutor anticipates a guilty plea which is likely to be sentenced in the magistrates' court. In cases where there is an anticipated not guilty plea or the case is likely to be sent or committed to the Crown Court for either trial or sentence, then it must be listed for the first hearing 28 days after charge or the next available court date thereafter.

Guilty plea in the magistrates' courts

3A.8 Where a defendant pleads guilty or indicates a guilty plea in a magistrates' court the court should consider whether a pre-sentence report – a stand down report if possible – is necessary.

Guilty plea in the Crown Court

3A.9 Where a magistrates' court is considering committal for sentence or the defendant has indicated an intention to plead guilty in a matter which is to be sent to the Crown Court, the magistrates' court should request the preparation of a pre-sentence report for the Crown Court's use if the magistrates' court considers that:

(a) there is a realistic alternative to a custodial sentence; or
(b) the defendant may satisfy the criteria for classification as a dangerous offender; or
(c) there is some other appropriate reason for doing so.

3A.10 When a magistrates' court sends a case to the Crown Court for trial and the defendant indicates an intention to plead guilty at the Crown Court, then that magistrates' court must set a date for a Plea and Trial Preparation Hearing at the Crown Court, in accordance with CrimPR 9.7(5)(a)(i).

Case sent for Crown Court trial: no indication of guilty plea

3A.11 In any case sent to the Crown Court for trial, other than one in which the defendant indicates an intention to plead guilty, the magistrates' court must set a date for a Plea and Trial Preparation Hearing, in accordance with CrimPR 9.7(5)(a)(ii). The Plea and Trial Preparation Hearing must be held within 28 days of sending, unless the standard directions of the Presiding Judges of the circuit direct otherwise. Paragraph 3A.16 below additionally applies to the arrangements for such hearings. A magistrates' court may give other directions appropriate to the needs of the case, in

accordance with CrimPR 3.5(3), and in accordance with any standard directions issued by the Presiding Judges of the circuit.

Defendant on bail: anticipated not guilty plea

3A.12 Where the defendant has been released on bail after being charged, and where the prosecutor does not anticipate a guilty plea at the first hearing in a magistrates' court, then it is essential that the initial details of the prosecution case that are provided for that first hearing are sufficient to assist the court, in order to identify the real issues and to give appropriate directions for an effective trial (regardless of whether the trial is to be heard in the magistrates' court or the Crown Court). In these circumstances, unless there is good reason not to do so, the prosecution should make available the following material in advance of the first hearing in the magistrates' court:

(a) A summary of the circumstances of the offence(s) including a summary of any account given by the defendant in interview;
(b) Statements and exhibits that the prosecution has identified as being of importance for the purpose of plea or initial case management, including any relevant CCTV that would be relied upon at trial and any Streamlined Forensic Report;
(c) Details of witness availability, as far as they are known at that hearing;
(d) Defendant's criminal record;
(e) Victim Personal Statements if provided;
(f) An indication of any medical or other expert evidence that the prosecution is likely to adduce in relation to a victim or the defendant;
(g) Any information as to special measures, bad character or hearsay, where applicable.

3A.13 In addition to the material required by CrimPR Part 8, the information required by the Preparation for Effective Trial form must be available to be submitted at the first hearing, and the parties must complete that form, in accordance with the guidance published with it. Where there is to be a contested trial in a magistrates' court, that form includes directions and a timetable that will apply in every case unless the court otherwise orders.

3A.14 Nothing in paragraph 3A.12-3A.13 shall preclude the court from taking a plea pursuant to CrimPR 3.9(2)(b) at the first hearing and for the court to case manage as far as practicable under Part 3 CrimPR.

Exercise of magistrates' court's powers

3A.15 In accordance with CrimPR 9.1, sections 49, 51(13) and 51A(11) of the Crime and Disorder Act 1998, and sections 17E, 18(5) and 24D of the Magistrates' Courts Act 1980 a single justice can:

a) allocate and send for trial;
b) take an indication of a guilty plea (but not pass sentence);
c) take a not guilty plea and give directions for the preparation of trial including:
    i. timetable for the proceedings;
    ii. the attendance of the parties;
    iii. the service of documents;
    iv. the manner in which evidence is to be given.

Case progression and trial preparation in the Crown Court

Plea and Trial Preparation Hearing

3A.16 In a case in which a magistrates' court has directed a Plea and Trial Preparation Hearing, the period which elapses between sending for trial and the date of that hearing must be consistent within each circuit. In every case, the time allowed for the conduct of the Plea and Trial Preparation Hearing must be sufficient for effective trial preparation. It is expected in every case that an indictment will be lodged at least 7 days in advance of the hearing. Please see the Note to the Practice Direction.

3A.17 In a case in which the defendant, not having done so before, indicates an intention to plead guilty to his representative after being sent for trial but before the Plea and Trial Preparation Hearing, the defence representative will notify the Crown Court and the prosecution forthwith. The court will ensure there is sufficient time at the Plea and Trial Preparation Hearing for sentence and a Judge should at once request the preparation of a pre-sentence report if it appears to the court that either:

(a) there is a realistic alternative to a custodial sentence; or
(b) the defendant may satisfy the criteria for classification as a dangerous offender; or
(c) there is some other appropriate reason for doing so.

3A.18 If at the Plea and Trial Preparation Hearing the defendant pleads guilty and no pre-sentence report has been prepared, if possible the court should obtain a stand down report.

3A.19 Where the defendant was remanded in custody after being charged and was sent for trial without initial details of the prosecution case having been served, then at least 7 days before the Plea and Trial Preparation Hearing the prosecutor should serve, as a minimum, the material identified in paragraph 3A.12 above. If at the Plea and Trial Preparation Hearing the defendant does not plead guilty, the court will be expected to identify the issues in the case and give appropriate directions for an effective trial. Please see the Note to the Practice Direction.

3A.20 At the Plea and Trial Preparation Hearing, in addition to the material required by paragraph 3A.12 above, the prosecutor must

serve sufficient evidence to enable the court to case manage effectively without the need for a further case management hearing, unless the case falls within paragraph 3A.21. In addition, the information required by the Plea and Trial Preparation Hearing form must be available to the court at that hearing, and it must have been discussed between the parties in advance. The prosecutor must provide details of the availability of likely prosecution witnesses so that a trial date can immediately be arranged if the defendant does not plead guilty.

Further case management hearing

3A.21 In accordance with CrimPR 3.13(1)(c), after the Plea and Trial Preparation Hearing there will be no further case management hearing before the trial unless:

(i) a condition listed in that rule is met; and

(ii) the court so directs, in order to further the overriding objective.

The directions to be given at the Plea and Trial Preparation Hearing therefore may include a direction for a further case management hearing, but usually will do so only in one of the following cases:

(a) Class 1 cases;

(b) Class 2 cases which carry a maximum penalty of 10 years or more;

(c) cases involving death by driving (whether dangerous or careless), or death in the workplace;

(d) cases involving a vulnerable witness;

(e) cases in which the defendant is a child or otherwise under a disability, or requires special assistance;

(f) cases in which there is a corporate or unrepresented defendant;

(g) cases in which the expected trial length is such that a further case management hearing is desirable and any case in which the trial is likely to last longer than four weeks;

(h) cases in which expert evidence is to be introduced;

(i) cases in which a party requests a hearing to enter a plea;

(j) cases in which an application to dismiss or stay has been made;

(k) cases in which arraignment has not taken place, whether because of an issue relating to fitness to plead, or abuse of process or sufficiency of evidence, or for any other reason;

(l) cases in which there are likely to be linked criminal and care directions in accordance with the 2013 Protocol.

3A.22 If a further case management hearing is directed, a defendant in custody will not usually be expected to attend in person, unless the court otherwise directs.

Compliance hearing

3A.23 If a party fails to comply with a case management direction, that party may be required to attend the court to explain the failure. Unless the court otherwise directs a defendant in custody will not usually be expected to attend. See paragraph 3A.26-3A.28 below.

Conduct of case progression hearings

3A.24 As far as possible, case progression should be managed without a hearing in the courtroom, using electronic communication in accordance with CrimPR 3.5(2)(d). Court staff should be nominated to conduct case progression as part of their role, in accordance with CrimPR 3.4(2). To aid effective communication the prosecution and defence representative should notify the court and provide details of who shall be dealing with the case at the earliest opportunity.

Completion of Effective Trial Monitoring form

3A.25 It is imperative that the Effective Trial Monitoring form (as devised and issued by Her Majesty's Courts and Tribunals Service) is accurately completed by the parties for all cases that have been listed for trial. Advocates must engage with the process by providing the relevant details and completing the form.

Compliance courts

3A.26 To ensure effective compliance with directions of the courts made in accordance with the Criminal Procedure Rules and the overriding objective, courts should maintain a record whenever a party to the proceedings has failed to comply with a direction made by the court. The parties may have to attend a hearing to explain any lack of compliance.

3A.27 These hearings may be conducted by live link facilities or via other electronic means, as the court may direct.

3A.28 It will be for the Presiding Judges, Resident Judge and Justices' Clerks to decide locally how often compliance courts should be held, depending on the scale and nature of the problem at each court centre.

Note to the Practice Direction

In 3A.16 and 3A.19 the reference to "at least 7 days" in advance of the hearing is necessitated by the fact that, for the time being, different circuits have different timescales for the Plea and Trial Preparation Hearing. Had this not been so, the paragraphs would have been drafted forward from the date of sending rather than backwards from the date of the Plea and Trial Preparation Hearing.

CPD I General matters 3B: PAGINATION AND INDEXING OF SERVED EVIDENCE

3B.1 The following directions apply to matters before the Crown Court, where

(a) there is an application to prefer a bill of indictment in relation to the case;

(b) a person is sent for trial under section 51 of the Crime and Disorder Act 1998 (sending cases to the Crown Court), to the service of copies of the documents containing the evidence on which the charge or charges are based under Paragraph 1 of Schedule 3 to that Act; or

(c) a defendant wishes to serve evidence.

3B.2 A party who serves documentary evidence in the Crown Court should:

(a) paginate each page in any bundle of statements and exhibits sequentially;

(b) provide an index to each bundle of statements produced including the following information:

i. the name of the case;
ii. the author of each statement;
iii. the start page number of the witness statement;
iv. the end page number of the witness statement.

(c) provide an index to each bundle of documentary and pictorial exhibits produced, including the following information:

i. the name of the case
ii. the exhibit reference;
iii. a short description of the exhibit;
iv. the start page number of the exhibit;
v. the end page number of the exhibit;
vi. where possible, the name of the person producing the exhibit should be added.

3B.3 Where additional documentary evidence is served, a party should paginate following on from the last page of the previous bundle or in a logical and sequential manner. A party should also provide notification of service of any amended index.

3B.4 The prosecution must ensure that the running total of the pages of prosecution evidence is easily identifiable on the most recent served bundle of prosecution evidence.

3B.5 For the purposes of these directions, the number of pages of prosecution evidence served on the court includes all

(a) witness statements;
(b) documentary and pictorial exhibits;
(c) records of interviews with the defendant; and

(d) records of interviews with other defendants which form part of the served prosecution documents or which are included in any notice of additional evidence,

but does not include any document provided on CD-ROM or by other means of electronic communication.

CPD I General matters 3C: ABUSE OF PROCESS STAY APPLICATIONS

3C.1 In all cases where a defendant in the Crown Court proposes to make an application to stay an indictment on the grounds of abuse of process, written notice of such application must be given to the prosecuting authority and to any co-defendant as soon as practicable after the defendant becomes aware of the grounds for doing so and not later than 14 days before the date fixed or warned for trial ("the relevant date"). Such notice must:

(a) give the name of the case and the indictment number;

(b) state the fixed date or the warned date as appropriate;

(c) specify the nature of the application;

(d) set out in numbered sub-paragraphs the grounds upon which the application is to be made;

(e) be copied to the chief listing officer at the court centre where the case is due to be heard.

3C.2 Any co-defendant who wishes to make a like application must give a like notice not later than seven days before the relevant date, setting out any additional grounds relied upon.

3C.3 In relation to such applications, the following automatic directions shall apply:

(a) the advocate for the applicant(s) must lodge with the court and serve on all other parties a skeleton argument in support of the application, at least five clear working days before the relevant date. If reference is to be made to any document not in the existing trial documents, a paginated and indexed bundle of such documents is to be provided with the skeleton argument;

(b) the advocate for the prosecution must lodge with the court and serve on all other parties a responsive skeleton argument at least two clear working days before the relevant date, together with a supplementary bundle if appropriate.

3C.4 Paragraphs XII D.17 to D.23 of these Practice Directions set out the general requirements for skeleton arguments. All skeleton arguments must specify any propositions of law to be advanced (together with the authorities relied upon in support, with paragraph references to passages relied upon) and, where appropriate, include a chronology of events and a list of

dramatis personae. In all instances where reference is made to a document, the reference in the trial documents or supplementary bundle is to be given.

3C.5 The above time limits are minimum time limits. In appropriate cases, the court will order longer lead times. To this end, in all cases where defence advocates are, at the time of the preliminary hearing or as soon as practicable after the case has been sent, considering the possibility of an abuse of process application, this must be raised with the judge dealing with the matter, who will order a different timetable if appropriate, and may wish, in any event, to give additional directions about the conduct of the application. If the trial judge has not been identified, the matter should be raised with the Resident Judge.

CPD I General matters 3D: VULNERABLE PEOPLE IN THE COURTS

3D.1 In respect of eligibility for special measures, 'vulnerable' and 'intimidated' witnesses are defined in sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009); 'vulnerable' includes those under 18 years of age and people with a mental disorder or learning disability; a physical disorder or disability; or who are likely to suffer fear or distress in giving evidence because of their own circumstances or those relating to the case.

3D.2 However, many other people giving evidence in a criminal case, whether as a witness or defendant, may require assistance: the court is required to take 'every reasonable step' to encourage and facilitate the attendance of witnesses and to facilitate the participation of any person, including the defendant (CrimPR 3.9(3)(a) and (b)). This includes enabling a witness or defendant to give their best evidence, and enabling a defendant to comprehend the proceedings and engage fully with his or her defence. The pre-trial and trial process should, so far as necessary, be adapted to meet those ends. Regard should be had to the welfare of a young defendant as required by section 44 of the Children and Young Persons Act 1933, and generally to Parts 1 and 3 of the Criminal Procedure Rules (the overriding objective and the court's powers of case management).

3D.3 Under Part 3 of the Rules, the court must identify the needs of witnesses at an early stage (CrimPR 3.2(2)(b)) and may require the parties to identify arrangements to facilitate the giving of evidence and participation in the trial (CrimPR 3.11(c)(iv) and (v)). There are various statutory special measures that the court may utilise to assist a witness in giving evidence. CrimPR Part 18 gives the procedures to be followed. Courts should note the 'primary rule' which requires the court to give a direction for a

special measure to assist a child witness or qualifying witness and that in such cases an application to the court is not required (CrimPR 18.9).

3D.4 Court of Appeal decisions on this subject include a judgment from the Lord Chief Justice, Lord Judge in *R v Cox* [2012] EWCA Crim 549, [2012] 2 Cr. App. R. 6; *R v Wills* [2011] EWCA Crim 1938, [2012] 1 Cr. App. R. 2; and *R v E* [2011] EWCA Crim 3028, [2012] Crim L.R. 563.

3D.5 In *R v Wills*, the Court endorsed the approach taken by the report of the Advocacy Training Council (ATC) 'Raising the Bar: the Handling of Vulnerable Witnesses, Victims and Defendants in Court' (2011). The report includes and recommends the use of 'toolkits' to assist advocates as they prepare to question vulnerable people at court:

http://www.advocacytrainingcouncil.org/vulnerable-witnesses/raising-the-bar

3D.6 Further toolkits are available through the Advocate's Gateway which is managed by the ATC's Management Committee:

http://www.theadvocatesgateway.org/

3D.7 These toolkits represent best practice. Advocates should consult and follow the relevant guidance whenever they prepare to question a young or otherwise vulnerable witness or defendant. Judges may find it helpful to refer advocates to this material and to use the toolkits in case management.

3D.8 'Achieving Best Evidence in Criminal Proceedings' (Ministry of Justice 2011) describes best practice in preparation for the investigative interview and trial:
http://www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf

CPD I General matters 3E: GROUND RULES HEARINGS TO PLAN THE QUESTIONING OF A VULNERABLE WITNESS OR DEFENDANT

3E.1 The judiciary is responsible for controlling questioning. Over-rigorous or repetitive cross-examination of a child or vulnerable witness should be stopped. Intervention by the judge, magistrates or intermediary (if any) is minimised if questioning, taking account of the individual's communication needs, is discussed in advance and ground rules are agreed and adhered to.

3E.2 Discussion of ground rules is required in all intermediary trials where they must be discussed between the judge or magistrates, advocates and intermediary before the witness gives evidence. The intermediary must be present but is not required to take the oath (the intermediary's declaration is made just before the witness gives evidence).

3E.3 Discussion of ground rules is good practice, even if no intermediary is used, in all young witness cases and in other cases where a witness or defendant has communication needs. Discussion before the day of trial is preferable to give advocates time to adapt their questions to the witness's needs. It may be helpful for a trial practice note of boundaries to be created at the end of the discussion. The judge may use such a document in ensuring that the agreed ground rules are complied with.

3E.4 All witnesses, including the defendant and defence witnesses, should be enabled to give the best evidence they can. In relation to young and/or vulnerable people, this may mean departing radically from traditional cross-examination. The form and extent of appropriate cross-examination will vary from case to case. For adult non vulnerable witnesses an advocate will usually put his case so that the witness will have the opportunity of commenting upon it and/or answering it. When the witness is young or otherwise vulnerable, the court may dispense with the normal practice and impose restrictions on the advocate 'putting his case' where there is a risk of a young or otherwise vulnerable witness failing to understand, becoming distressed or acquiescing to leading questions. Where limitations on questioning are necessary and appropriate, they must be clearly defined. The judge has a duty to ensure that they are complied with and should explain them to the jury and the reasons for them. If the advocate fails to comply with the limitations, the judge should give relevant directions to the jury when that occurs and prevent further questioning that does not comply with the ground rules settled upon in advance. Instead of commenting on inconsistencies during cross-examination, following discussion between the judge and the advocates, the advocate or judge may point out important inconsistencies after (instead of during) the witness's evidence. The judge should also remind the jury of these during summing up. The judge should be alert to alleged inconsistencies that are not in fact inconsistent, or are trivial.

3E.5 If there is more than one defendant, the judge should not permit each advocate to repeat the questioning of a vulnerable witness. In advance of the trial, the advocates should divide the topics between them, with the advocate for the first defendant leading the questioning, and the advocate(s) for the other defendant(s) asking only ancillary questions relevant to their client's case, without repeating the questioning that has already taken place on behalf of the other defendant(s).

3E.6 In particular in a trial of a sexual offence, 'body maps' should be provided for the witness' use. If the witness needs to indicate a part of the body, the advocate should ask the witness to point to the relevant part on the body map. In sex cases, judges should not permit advocates to ask the witness to point to a part of the

witness' own body. Similarly, photographs of the witness' body should not be shown around the court while the witness is giving evidence.

CPD I General matters 3F: INTERMEDIARIES

Role and functions of intermediaries in criminal courts

3F.1 Intermediaries facilitate communication with witnesses and defendants who have communication needs. Their primary function is to improve the quality of evidence and aid understanding between the court, the advocates and the witness or defendant. For example, they commonly advise on the formulation of questions so as to avoid misunderstanding. On occasion, they actively assist and intervene during questioning. The extent to which they do so (if at all) depends on factors such as the communication needs of the witness or defendant, and the skills of the advocates in adapting their language and questioning style to meet those needs.

3F.2 Intermediaries are independent of parties and owe their duty to the court. The court and parties should be vigilant to ensure they act impartially and their assistance to witnesses and defendants is transparent. It is however permissible for an advocate to have a private consultation with an intermediary when formulating questions (although control of questioning remains the overall responsibility of the court).

3F.3 Further information is in *Intermediaries: Step by Step* (Toolkit 16; The Advocate's Gateway, 2015) and chapter 5 of the *Equal Treatment Bench Book* (Judicial College, 2013).

Links to publications

- http://www.theadvocatesgateway.org/images/toolkits/16intermediariesstepbystep060315.pdf
- https://www.judiciary.gov.uk/wp-content/uploads/2013/11/5-children-and-vulnerable-adults.pdf

Assessment

3F.4 The process of appointment should begin with assessment by an intermediary and a report. The report will make recommendations to address the communication needs of the witness or defendant during trial.

3F.5 In light of the scarcity of intermediaries, the appropriateness of assessment must be decided with care to ensure their availability for those witnesses and defendants who are most in need. The

decision should be made on an individual basis, in the context of the circumstances of the particular case.

Intermediaries for prosecution and defence witnesses

3F.6 Intermediaries are one of the special measures available to witnesses under the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999). Witnesses deemed vulnerable in accordance with the criteria in s.16 YJCEA are eligible for the assistance of an intermediary when giving evidence pursuant to s.29 YJCEA 1999. These provisions do not apply to defendants.

3F.7 An application for an intermediary to assist a witness when giving evidence must be made in accordance with Part 18 of the Criminal Procedure Rules. In addition, where an intermediary report is available (see 3F.4 above), it should be provided with the application.

3F.8 The Witness Intermediary Scheme (WIS) operated by the National Crime Agency identifies intermediaries for witnesses and may be used by the prosecution and defence. The WIS is contactable at wit@nca.x.gsi.gov.uk / 0845 000 5463. An intermediary appointed through the WIS is defined as a 'Registered Intermediary' and matched to the particular witness based on expertise, location and availability. Registered Intermediaries are accredited by the WIS and bound by Codes of Practice and Ethics issued by the Ministry of Justice (which oversees the WIS).

3F.9 Having identified a Registered Intermediary, the WIS does not provide funding. The party appointing the Registered Intermediary is responsible for payment at rates specified by the Ministry of Justice.

3F.10 Further information is in *The Registered Intermediaries Procedural Guidance Manual* (Ministry of Justice, 2015) and *Intermediaries: Step by Step* (see 3F.3 above).

Link to publication

- http://www.theadvocatesgateway.org/images/procedures/registered-intermediary-procedural-guidance-manual.pdf

Intermediaries for defendants

3F.11 Statutory provisions providing for defendants to be assisted by an intermediary when giving evidence (where necessary to ensure a fair trial) are not in force (because s.104 Coroners and Justice Act 2009, which would insert ss. 33BA and 33BB into the YJCEA 1999, has yet to be commenced).

3F. 12 The court may direct the appointment of an intermediary to assist a defendant in reliance on its inherent powers (*C v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin)). There is however no presumption that a defendant will be so assisted and, even where an intermediary would improve the trial process, appointment is not mandatory (*R v Cox* [2012] EWCA Crim 549). The court should adapt the trial process to address a defendant's communication needs (*R v Cox* [2012] EWCA Crim 549). It will rarely exercise its inherent powers to direct appointment of an intermediary but where a defendant is vulnerable or for some other reason experiences communication or hearing difficulties, such that he or she needs more help to follow the proceedings than her or his legal representatives readily can give having regard to their other functions on the defendant's behalf, then the court should consider sympathetically any application for the defendant to be accompanied throughout the trial by a support worker or other appropriate companion who can provide that assistance. This is consistent with CrimPR 3.9(3)(b) (see paragraph 3D.2 above); consistent with the observations in R v Cox (see paragraph 3D.4 above), *R (OP) v Ministry of Justice* [2014] EWHC 1944 (Admin) and *R v Rashid* [2017] EWCA Crim 2; and consistent with the arrangements contemplated at paragraph 3G.8 below.

3F.13 The court may exercise its inherent powers to direct appointment of an intermediary to assist a defendant giving evidence or for the entire trial. Terms of appointment are for the court and there is no illogicality in restricting the appointment to the defendant's evidence (*R v R* [2015] EWCA Crim 1870), when the 'most pressing need' arises (*OP v Secretary of State for Justice* [2014] EWHC 1944 (Admin)). Directions to appoint an intermediary for a defendant's evidence will thus be rare, but for the entire trial extremely rare, keeping in mind paragraph 3F.12 above.

3F.14 An application for an intermediary to assist a defendant must be made in accordance with Part 18 of the Criminal Procedure Rules. In addition, where an intermediary report is available (see 3F.4 above), it should be provided with the application.

3F.15 The WIS is not presently available to identify intermediaries for defendants (although in *OP v Secretary of State for Justice* [2014] EWHC 1944 (Admin), the Ministry of Justice was ordered to consider carefully whether it were justifiable to refuse equal provision to witnesses and defendants with respect to their evidence). 'Non-registered intermediaries' (intermediaries appointed other than through the WIS) must therefore be appointed for defendants. Although training is available, there is no accreditation process for non-registered intermediaries and rates of payment are unregulated.

3F.16 Arrangements for funding of intermediaries for defendants depend on the stage of the appointment process. Where the defendant is publicly funded, an application should be made to the Legal Aid Agency for prior authority to fund a pre-trial assessment. If the application is refused, an application may be made to the court to use its inherent powers to direct a pre-trial assessment and funding thereof. Where the court uses its inherent powers to direct assistance by an intermediary at trial (during evidence or for the entire trial), court staff are responsible for arranging payment from Central Funds. Internal guidance for court staff is in *Guidance for HMCTS Staff: Registered and Non-Registered Intermediaries for Vulnerable Defendants and Non-Vulnerable Defence and Prosecution Witnesses* (Her Majesty's Courts and Tribunals Service, 2014).

3F.17 The court should be satisfied that a non-registered intermediary has expertise suitable to meet the defendant's communication needs.

3F.18 Further information is in *Intermediaries: Step by Step* (see 3F.3 above).

Ineffective directions for intermediaries to assist defendants

3F.19 Directions for intermediaries to help defendants may be ineffective due to general unavailability, lack of suitable expertise, or non-availability for the purpose directed (for example, where the direction is for assistance during evidence, but an intermediary will only accept appointment for the entire trial).

3F.20 Intermediaries may contribute to the administration of justice by facilitating communication with appropriate defendants during the trial process. A trial will not be rendered unfair because a direction to appoint an intermediary for the defendant is ineffective. 'It would, in fact, be a most unusual case for a defendant who is fit to plead to be so disadvantaged by his condition that a properly brought prosecution would have to be stayed' because an intermediary with suitable expertise is not available for the purpose directed by the court (*R v Cox* [2012] EWCA Crim 549).

3F.21 Faced with an ineffective direction, it remains the court's responsibility to adapt the trial process to address the defendant's communication needs, as was the case prior to the existence of intermediaries (*R v Cox* [2012] EWCA Crim 549). In such a case, a ground rules hearing should be convened to ensure every reasonable step is taken to facilitate the defendant's participation in accordance with CrimPR 3.9. At the hearing, the court should make new, further and / or alternative directions. This includes setting ground rules to help the defendant follow proceedings and (where applicable) to give evidence.

3F.22 For example, to help the defendant follow proceedings the court may require evidence to be adduced by simple questions, with witnesses being asked to answer in short sentences. Regular breaks may assist the defendant's concentration and enable the defence advocate to summarise the evidence and take further instructions.

3F. 23 Further guidance is available in publications such as *Ground Rules Hearings and the Fair Treatment of Vulnerable People in Court* (Toolkit 1; The Advocate's Gateway, 2015) and *General Principles from Research - Planning to Question a Vulnerable Person or Someone with Communication Needs* (Toolkit 2(a); The Advocate's Gateway, 2015). In the absence of an intermediary, these publications include information on planning how to manage the participation and questioning of the defendant, and the formulation of questions to avert misunderstanding (for example, by avoiding 'long and complicated questions…posed in a leading or 'tagged' manner' (*R v Wills* [2011] EWCA Crim 1938, [2012] 1 Cr App R 2)).

Links to publications

- http://www.theadvocatesgateway.org/images/toolkits/1groundrulesheari ngsandthefairtreatmentofvulnerablepeopleincourt060315.pdf
- http://www.theadvocatesgateway.org/images/toolkits/2generalprinciplesfromresearchpolicyandguidance-planningtoquestionavulnerablepersonorsomeonewithcommunicationneeds141215.pdf

Intermediaries for witnesses and defendants under 18

3F.24 Communication needs (such as short attention span, suggestibility and reticence in relation to authority figures) are common to many witnesses and defendants under 18. Consideration should therefore be given to the communication needs of all children and young people appearing in the criminal courts and to adapting the trial process to address any such needs. Guidance is available in publications such as *Planning to Question a Child or Young Person* (Toolkit 6; The Advocate's Gateway, 2015) and *Effective Participation of Young Defendants* (Toolkit 8; The Advocate's Gateway, 2013).

Links to publications

- http://www.theadvocatesgateway.org/images/toolkits/6planningtoquestionachildoryoungperson141215.pdf
- http://www.theadvocatesgateway.org/images/toolkits/8YounggDefendants211013.pdf

3F.25 For the reasons set out in 3F.5 above, the appropriateness of an intermediary assessment for witnesses and defendants under 18 must be decided with care. Whilst there is no presumption that they will be assessed by an intermediary (to evaluate their communication needs prior to trial) or assisted by an intermediary at court (for example, if / when giving evidence), the decision should be made on an individual basis in the context of the circumstances of the particular case.

3F.26 Assessment by an intermediary should be considered for witnesses and defendants under 18 who seem liable to misunderstand questions or to experience difficulty expressing answers, including those who seem unlikely to be able to recognise a problematic question (such as one that is misleading or not readily understood), and those who may be reluctant to tell a questioner in a position of authority if they do not understand.

Attendance at ground rules hearing

3F.27 Where the court directs questioning will be conducted through an intermediary, CrimPR 3.9 requires the court to set ground rules. The intermediary should be present at the ground rules hearing to make representations in accordance with CrimPR 3.9(7)(a).

Listing

3F.28 Where the court directs an intermediary will attend the trial, their dates of availability should be provided to the court. It is preferable that such trials are fixed rather than placed in warned lists.

Photographs of court facilities

3F.29 Resident Judges in the Crown Court or the Chief Clerk or other responsible person in the magistrates' courts should, in consultation with HMCTS managers responsible for court security matters, develop a policy to govern under what circumstances photographs or other visual recordings may be made of court facilities, such as a live link room, to assist vulnerable or child witnesses to familiarise themselves with the setting, so as to be enabled to give their best evidence. For example, a photograph may provide a helpful reminder to a witness whose court visit has taken place sometime earlier. Resident Judges should tend to permit photographs to be taken for this purpose by intermediaries or supporters, subject to whatever restrictions the Resident Judge or responsible person considers to be appropriate, having regard to the security requirements of the court.

CPD I General matters 3G: VULNERABLE DEFENDANTS

Before the trial, sentencing or appeal

3G.1 If a vulnerable defendant, especially one who is young, is to be tried jointly with one who is not, the court should consider at the plea and case management hearing, or at a case management hearing in a magistrates' court, whether the vulnerable defendant should be tried on his own, but should only so order if satisfied that a fair trial cannot be achieved by use of appropriate special measures or other support for the defendant. If a vulnerable defendant is tried jointly with one who is not, the court should consider whether any of the modifications set out in this direction should apply in the circumstances of the joint trial and, so far as practicable, make orders to give effect to any such modifications.

3G.2 It may be appropriate to arrange that a vulnerable defendant should visit, out of court hours and before the trial, sentencing or appeal hearing, the courtroom in which that hearing is to take place so that he or she can familiarise him or herself with it.

3G.3 Where an intermediary is being used to help the defendant to communicate at court, the intermediary should accompany the defendant on his or her pre-trial visit. The visit will enable the defendant to familiarise him or herself with the layout of the court, and may include matters such as: where the defendant will sit, either in the dock or otherwise; court officials (what their roles are and where they sit); who else might be in the court, for example those in the public gallery and press box; the location of the witness box; basic court procedure; and the facilities available in the court.

3G.4 If the defendant's use of the live link is being considered, he or she should have an opportunity to have a practice session.

3G.5 If any case against a vulnerable defendant has attracted or may attract widespread public or media interest, the assistance of the police should be enlisted to try and ensure that the defendant is not, when attending the court, exposed to intimidation, vilification or abuse. Section 41 of the Criminal Justice Act 1925 prohibits the taking of photographs of defendants and witnesses (among others) in the court building or in its precincts, or when entering or leaving those precincts. A direction reminding media representatives of the prohibition may be appropriate. The court should also be ready at this stage, if it has not already done so, where relevant to make a reporting restriction under section 39 of the Children and Young Persons Act 1933 or, on an appeal to the Crown Court from a youth court, to remind media representatives of the application of section 49 of that Act.

3G.6 The provisions of the Practice Direction accompanying Part 6 should be followed.

The trial, sentencing or appeal hearing

3G.7 Subject to the need for appropriate security arrangements, the proceedings should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level.

3G.8 Subject again to the need for appropriate security arrangements, a vulnerable defendant, especially if he is young, should normally, if he wishes, be free to sit with members of his family or others in a like relationship, and with some other suitable supporting adult such as a social worker, and in a place which permits easy, informal communication with his legal representatives. The court should ensure that a suitable supporting adult is available throughout the course of the proceedings.

3G.9 It is essential that at the beginning of the proceedings, the court should ensure that what is to take place has been explained to a vulnerable defendant in terms he or she can understand and, at trial in the Crown Court, it should ensure in particular that the role of the jury has been explained. It should remind those representing the vulnerable defendant and the supporting adult of their responsibility to explain each step as it takes place and, at trial, explain the possible consequences of a guilty verdict and credit for a guilty plea. The court should also remind any intermediary of the responsibility to ensure that the vulnerable defendant has understood the explanations given to him/her. Throughout the trial the court should continue to ensure, by any appropriate means, that the defendant understands what is happening and what has been said by those on the bench, the advocates and witnesses.

3G.10 A trial should be conducted according to a timetable which takes full account of a vulnerable defendant's ability to concentrate. Frequent and regular breaks will often be appropriate. The court should ensure, so far as practicable, that the whole trial is conducted in clear language that the defendant can understand and that evidence in chief and cross-examination are conducted using questions that are short and clear. The conclusions of the 'ground rules' hearing should be followed, and advocates should use and follow the 'toolkits' as discussed above.

3G.11 A vulnerable defendant who wishes to give evidence by live link, in accordance with section 33A of the Youth Justice and Criminal Evidence Act 1999, may apply for a direction to that effect; the procedure in CrimPR 18.14 to 18.17 should be followed. Before making such a direction, the court must be satisfied that it is in the interests of justice to do so and that the use of a live link would enable the defendant to participate more effectively as a witness in the proceedings. The direction will need to deal with the practical

arrangements to be made, including the identity of the person or persons who will accompany him or her.

3G.12 In the Crown Court, the judge should consider whether robes and wigs should be worn, and should take account of the wishes of both a vulnerable defendant and any vulnerable witness. It is generally desirable that those responsible for the security of a vulnerable defendant who is in custody, especially if he or she is young, should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason.

3G.13 The court should be prepared to restrict attendance by members of the public in the courtroom to a small number, perhaps limited to those with an immediate and direct interest in the outcome. The court should rule on any challenged claim to attend. However, facilities for reporting the proceedings (subject to any restrictions under section 39 or 49 of the Children and Young Persons Act 1933) must be provided. The court may restrict the number of reporters attending in the courtroom to such number as is judged practicable and desirable. In ruling on any challenged claim to attend in the courtroom for the purpose of reporting, the court should be mindful of the public's general right to be informed about the administration of justice.

3G.14 Where it has been decided to limit access to the courtroom, whether by reporters or generally, arrangements should be made for the proceedings to be relayed, audibly and if possible visually, to another room in the same court complex to which the media and the public have access if it appears that there will be a need for such additional facilities. Those making use of such a facility should be reminded that it is to be treated as an extension of the courtroom and that they are required to conduct themselves accordingly.

CPD I General matters 3H: WALES AND THE WELSH LANGUAGE: DEVOLUTION ISSUES

3H.1 These are the subject of Practice Direction: (Supreme Court) (Devolution Issues) [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486, to which reference should be made.

CPD I General matters 3J: WALES AND THE WELSH LANGUAGE: APPLICATIONS FOR EVIDENCE TO BE GIVEN IN WELSH

3J.1 If a defendant in a court in England asks to give or call evidence in the Welsh language, the case should not be transferred to Wales. In ordinary circumstances, interpreters can be provided on request.

CPD I General matters 3K: WALES AND THE WELSH LANGUAGE: USE OF THE WELSH LANGUAGE IN COURTS IN WALES

3K.1 The purpose of this direction is to reflect the principle of the Welsh Language Act 1993 that, in the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality.

General

3K.2 It is the responsibility of the legal representatives in every case in which the Welsh language may be used by any witness or party, or in any document which may be placed before the court, to inform the court of that fact, so that appropriate arrangements can be made for the listing of the case.

3K.3 Any party or witness is entitled to use Welsh in a magistrates' court in Wales without giving prior notice. Arrangements will be made for hearing such cases in accordance with the 'Magistrates' Courts' Protocol for Listing Cases where the Welsh Language is used' (January 2008) which is available on the Judiciary's website: http://www.judiciary.gov.uk/NR/exeres/57AD4763-F265-47B9-8A35-0442E08160E6. See also CrimPR 24.14.

3K.4 If the possible use of the Welsh language is known at the time of sending or appeal to the Crown Court, the court should be informed immediately after sending or when the notice of appeal is lodged. Otherwise, the court should be informed as soon as the possible use of the Welsh language becomes known.

3K.5 If costs are incurred as a result of failure to comply with these directions, a wasted costs order may be made against the defaulting party and / or his legal representatives.

3K.6 The law does not permit the selection of jurors in a manner which enables the court to discover whether a juror does or does not speak Welsh, or to secure a jury whose members are bilingual, to try a case in which the Welsh language may be used.

Preliminary and plea and case management hearings

3K.7 An advocate in a case in which the Welsh language may be used must raise that matter at the preliminary and/or the plea and case management hearing and endorse details of it on the advocates' questionnaire, so that appropriate directions may be given for the progress of the case.

Listing

3K.8 The listing officer, in consultation with the resident judge, should ensure that a case in which the Welsh language may be used is listed

(a) wherever practicable before a Welsh speaking judge, and

(b) in a court in Wales with simultaneous translation facilities.

Interpreters

3K.9 Whenever an interpreter is needed to translate evidence from English into Welsh or from Welsh into English, the court listing officer in whose court the case is to be heard shall contact the Welsh Language Unit who will ensure the attendance of an accredited interpreter.

Jurors

3K.10 The jury bailiff, when addressing the jurors at the start of their period of jury service, shall inform them that each juror may take an oath or affirm in Welsh or English as he wishes.

3K.11 After the jury has been selected to try a case, and before it is sworn, the court officer swearing in the jury shall inform the jurors in open court that each juror may take an oath or affirm in Welsh or English as he wishes. A juror who takes the oath or affirms in Welsh should not be asked to repeat it in English.

3K.12 Where Welsh is used by any party or witness in a trial, an accredited interpreter will provide simultaneous translation from Welsh to English for the jurors who do not speak Welsh. There is no provision for the translation of evidence from English to Welsh for a Welsh speaking juror.

3K.13 The jury's deliberations must be conducted in private with no other person present and therefore no interpreter may be provided to translate the discussion for the benefit of one or more of the jurors.

Witnesses

3K.14 When each witness is called, the court officer administering the oath or affirmation shall inform the witness that he may be sworn or affirm in Welsh or English, as he wishes. A witness who takes the oath or affirms in Welsh should not be asked to repeat it in English.

Opening / closing of Crown Courts

3K.15 Unless it is not reasonably practicable to do so, the opening and closing of the court should be performed in Welsh and English.

Role of Liaison Judge

3K.16 If any question or problem arises concerning the implementation of these directions, contact should in the first place be made with

the Liaison Judge for the Welsh language through the Wales Circuit Office:

HMCTS WALES / GLITEM CYMRU
3rd Floor, Churchill House / 3ydd Llawr Tŷ Churchill
Churchill Way / Ffordd Churchill
Cardiff / Caerdydd
CF10 2HH
029 2067 8300

CPD I General Matters 3L: Security of Prisoners at Court

3L.1 High-risk prisoners identified to the court as presenting a significant risk of escape, violence in court or danger to those in the court and its environs, and to the public at large, will as far as possible, have administrative and remand appearances listed for disposal by way of live link. They will have priority for the use of video equipment.

3L.2 In all other proceedings that require the appearance in person of a high-risk prisoner, the proceedings will be listed at an appropriately secure court building and in a court with a secure (enclosed or ceiling-high) dock.

3L.3 Where a secure dock or live link is not available the court will be asked to consider an application for additional security measures, which may include:

(a) the use of approved restraints (but see below at 3L.6);

(b) the deployment of additional escort staff;

(c) securing the court room for all or part of the proceedings;

(d) in exceptional circumstances, moving the hearing to a prison.

3L.4 National Offender Management Service (NOMS) will be responsible for providing the assessment of the prisoner and it is accepted that this may change at short notice. NOMS must provide notification to the listing officer of all Category A prisoners, those on the Escape-list and Restricted Status prisoners or other prisoners who have otherwise been assessed as presenting a significant risk of violence or harm. There is a presumption that all prisoners notified as high-risk will be allocated a hearing by live link and/or secure dock facilities. Where the court cannot provide a secure listing, the reasons should be provided to the establishment so that alternative arrangements can be considered.

Applications for use of approved restraints

3L.5 It is the duty of the court to decide whether a prisoner who appears before them should appear in restraints or not. Their

decision must comply with the requirements of the European Convention on Human Rights, particularly Article 3, which prohibits degrading treatment, see Ranniman v Finland (1997) 26 EHRR 56.

3L.6 No prisoner should be handcuffed in court unless there are reasonable grounds for apprehending that he will be violent or will attempt to escape. If an application is made, it must be entertained by the court and a ruling must be given. The defence should be given the opportunity to respond to the application: proceeding in the absence of the defendant or his representative may give rise to an issue under Article 6(1) of the European Convention on Human Rights: R v Rollinson (1996) 161 JP 107, CA. If an application is to be made ex parte then that application should be made inter partes and the defence should be given an opportunity to respond.

Additional security measures

3L.7 It may be in some cases that additional dock officers are deployed to mitigate the risk that a prisoner presents. When the nature of the risk is so serious that increased deployment will be insufficient or would in itself be so obtrusive as to prejudice a fair trial, then the court may be required to consider the following measures:

(a) reconsider the case for a live link hearing, including transferring the case to a court where the live link is available;

(b) transfer the case to an appropriately secure court;

(c) the use of approved restraints on the prisoner for all or part of the proceedings;

(d) securing the court room for all or part of the proceedings; and

(e) the use of (armed) police in the court building.

3L.8 The establishment seeking the additional security measures will submit a Court Management Directions Form setting out the evidence of the prisoners identified risk of escape or violence and requesting the courts approval of security measures to mitigate that risk. This must be sent to the listing officer along with current, specific and credible evidence that the security measures are both necessary and proportionate to the identified risk and that the risk cannot be managed in any other way.

3L.9 If the court is asked to consider transfer of the case, then this must be in accordance with the Listing and Allocation Practice Direction XIII F.11-F.13 post. The listing officer will liaise with the establishment, prosecution and the defence to ensure the needs of the witnesses are taken into account.

3L.10 The Judge who has conduct of the case must deal with any application for the use of restraints or any other security measure and will hear representations from the Crown Prosecution Service and the defence before proceeding. The application will only be granted if:

(a) there are good grounds for believing that the prisoner poses a significant risk of trying to escape from the court (beyond the assumed motivation of all prisoners to escape) and/or risk of serious harm towards those persons in court or the public generally should an escape attempt be successful; and

(b) where there is no other viable means of preventing escape or serious harm.

High-risk prisoners giving evidence from the witness box

3L.11 High-risk prisoners giving evidence from the witness box may pose a significant security risk. In circumstances where such prisoners are required to move from a secure dock to an insecure witness box, an application may be made for the court to consider the use of additional security measures including:

(a) the use of approved restraints;

(b) the deployment of additional escort staff or police in the courtroom or armed police in the building. The decision to deploy an armed escort is for the Chief Inspector of the relevant borough: the decision to allow the armed escort in or around the court room is for the Senior Presiding Judge (see below);

(c) securing the courtroom for all or part of the proceedings;

(d) giving evidence from the secure dock; and

(e) use of live link if the prisoner is not the defendant.

CPD I General Matters 3M: PROCEDURE FOR APPLICATIONS FOR ARMED POLICE PRESENCE IN THE ROYAL COURTS OF JUSTICE, CROWN COURTS AND MAGISTRATES' COURT BUILDINGS

3M.1 This Practice Direction sets out the procedure for the making and handling of applications for authorisation for the presence of armed police officers within the precincts of any Crown Court and magistrates' court buildings at any time. It applies to an application to authorise the carriage of firearms or tasers in court. It does not apply to officers who are carrying CS spray or PAVA incapacitant spray, which is included in the standard equipment issued to officers in some forces and therefore no separate authorisation is required for its carriage in court.

3M.2 This Practice Direction applies to all cases in England and Wales in which a police unit intends to request authorisation for the presence of armed police officers in the Crown Court or in the magistrates' court buildings at any time and including during the delivery of prisoners to court.

3M.3 This Practice Direction allows applications to be made for armed police presence in the Royal Courts of Justice.

Emergency situations

3M.4 This Practice Direction does not apply in an emergency situation. In such circumstances, the police must be able to respond in a way in which their professional judgment deems most appropriate.

Designated court centres

3M.5 Applications may only be made for armed police presence in the designated Crown Court and magistrates' court centres (see below). This list may be revised from time to time in consultation with the Association of Chief Police Officers (ACPO) and HMCTS. It will be reviewed at least every five years in consultation with ACPO armed police secretariat and the Presiding Judges.

3M.6 The Crown Court centres designated for firearms deployment are:

(a) Northern Circuit: Carlisle, Chester, Liverpool, Preston, Manchester Crown Square & Manchester Minshull Street.

(b) North Eastern Circuit: Bradford, Leeds, Newcastle upon Tyne, Sheffield, Teesside and Kingston-upon-Hull.

(c) Western Circuit: Bristol, Winchester and Exeter.

(d) South Eastern Circuit (not including London): Canterbury, Chelmsford, Ipswich, Luton, Maidstone, Norwich, Reading and St Albans.

(e) South Eastern Circuit (London only): Central Criminal Court, Woolwich, Kingston and Snaresbrook.

(f) Midland Circuit: Birmingham, Northampton, Nottingham and Leicester.

(g) Wales Circuit: Cardiff, Swansea and Caernarfon.

3M.7 The magistrates' courts designated for firearms deployment are:

(a) South Eastern Circuit (London only): Westminster Magistrates' Court and Belmarsh Magistrates' Court.

Preparatory work prior to applications in all cases

3M.8 Prior to the making of any application for armed transport of prisoners or the presence of armed police officers in the court building, consideration must be given to making use of prison

video link equipment to avoid the necessity of prisoners' attendance at court for the hearing in respect of which the application is to be made.

3M.9 Notwithstanding their designation, each requesting officer will attend the relevant court before an application is made to ensure that there have been no changes to the premises and that there are no circumstances that might affect security arrangements.

Applying in the Royal Courts of Justice

3M.10 All applications should be sent to the Listing Office of the Division in which the case is due to appear. The application should be sent by email if possible and must be on the standard form.

3M.11 The Listing Office will notify the Head of Division, providing a copy of the email and any supporting evidence. The Head of Division may ask to see the senior police office concerned.

3M.12 The Head of Division will consider the application. If it is refused, the application fails and the police must be notified.

3M.13 In the absence of the Head of Division, the application should be considered by the Vice-President of the Division.

3M.14 The relevant Court Office will be notified of the decision and that office will immediately inform the police by telephone. The decision must then be confirmed in writing to the police.

Applying to the Crown Court

3M.15 All applications should be sent to the Cluster Manager and should be sent by email if possible and must be on the standard form.

3M.16 The Cluster Manager will notify the Presiding Judge on the circuit and the Resident Judge by email, providing a copy of the form and any supporting evidence. The Presiding Judge may ask to see the senior police officer concerned.

3M.17 The Presiding Judge will consider the application. If it is refused the application fails and the police must be informed.

3M.18 If the Presiding Judge approves the application it should be forwarded to the secretary in the Senior Presiding Judge's Office. The Senior Presiding Judge will make the final decision. The Presiding Judge will receive written confirmation of that decision.

3M.19 The Presiding Judge will notify the Cluster Manager and the Resident Judge of the decision. The Cluster Manager will immediately inform the police of the decision by telephone. The decision must then be confirmed in writing to the police.

Urgent applications to the Crown Court

3M.20 If the temporary deployment of armed police arises as an urgent issue and a case would otherwise have to be adjourned; or if the trial judge is satisfied that there is a serious risk to public safety, then the Resident Judge will have a discretion to agree such deployment without having obtained the consent of a Presiding Judge or the Senior Presiding Judge. In such a case:

(a) the Resident Judge should assess the facts and agree the proposed solution with a police officer of at least Superintendent level. That officer should agree the approach with the Firearms Division of the police.

(b) if the proposed solution involves the use of armed police officers, the Resident Judge must try to contact the Presiding Judge and/or the Senior Presiding Judge by email and telephone. The Cluster Manager should be informed of the situation.

(c) if the Resident Judge cannot obtain a response from the Presiding Judge or the Senior Presiding Judge, the Resident Judge may grant the application if satisfied:

(i) that the application is necessary;

(ii) that without such deployment there would be a significant risk to public safety; and

(iii) that the case would have to be adjourned at significant difficulty or inconvenience.

3M.21 The Resident Judge must keep the position under continual review, to ensure that it remains appropriate and necessary. The Resident Judge must make continued efforts to contact the Presiding Judge and the Senior Presiding Judge to notify them of the full circumstances of the authorisation.

Applying to the magistrates' courts

3M.22 All applications should be directed, by email if possible, to the Office of the Chief Magistrate, at Westminster Magistrates' Court and must be on the standard form.

3M.23 The Chief Magistrate should consider the application and, if approved, it should be forwarded to the Senior Presiding Judge's Office. The Senior Presiding Judge will make the final decision. The Chief Magistrate will receive written confirmation of that decision and will then notify the requesting police officer and, where authorisation is given, the affected magistrates' court of the decision.

Urgent applications in the magistrates' courts

3M.24 If the temporary deployment of armed police arises as an urgent issue and a case would otherwise have to be adjourned; or if the Chief Magistrate is satisfied that there is a serious risk to public safety, then the Chief Magistrate will have a discretion to agree such deployment without having obtained the consent of the Senior Presiding Judge. In such a case:

(a) the Chief Magistrate should assess the facts and agree the proposed solution with a police officer of at least Superintendent level. That officer should agree the approach with the Firearms Division of the police.

(b) if the proposed solution involves the use of armed police officers, the Chief Magistrate must try to contact the Senior Presiding Judge by email and telephone. The Cluster Manager should be informed of the situation.

(c) if the Chief Magistrate cannot obtain a response from the Senior Presiding Judge, the Chief Magistrate may grant the application if satisfied:

(i) that the application is necessary;

(ii) that without such deployment there would be a significant risk to public safety; and

(iii) that the case would have to be adjourned at significant difficulty or inconvenience.

3M.25 The Chief Magistrate must keep the position under continual review, to ensure that it remains appropriate and necessary. The Chief Magistrate must make continued efforts to contact the Senior Presiding Judge to notify him of the full circumstances of the authorisation.

CPD I General matters 3N: USE OF LIVE LINK AND TELEPHONE FACILITIES

3N.1 Where it is lawful and in the interests of justice to do so, courts should exercise their statutory and other powers to conduct hearings by live link or telephone. This is consistent with the Criminal Procedure Rules and with the recommendations of the President of the Queen's Bench Division's *Review of Efficiency in Criminal Proceedings* published in January 2015. Save where legislation circumscribes the court's jurisdiction, the breadth of that jurisdiction is acknowledged by CrimPR 3.5(1), (2)(d).

3N.2 It is the duty of the court to make use of technology actively to manage the case: CrimPR 3.2(1), (2)(h). That duty includes an obligation to give directions for the use of live links and telephone facilities in the circumstances listed in CrimPR 3.2(4) and (5) (pre-

trial hearings, including pre-trial case management hearings). Where the court directs that evidence is to be given by live link, and especially where such a direction is given on the court's own initiative, it is essential that the decision is communicated promptly to the witness: CrimPR 18.4. Contrary to a practice adopted by some courts, none of those rules or other provisions require the renewal of a live link direction merely because a trial has had to be postponed or adjourned. Once made, such a direction applies until it is discharged by the court, having regard to the relevant statutory criteria.

3N.3 It is the duty of the parties to alert the court to any reason why live links or telephones should not be used where CrimPR 3.2 otherwise would oblige the court to do so; and, where a direction for the use of such facilities has been made, it is the duty of the parties as soon as practicable to alert the court to any reason why that direction should be varied CrimPR 3.3(2)(e) and 3.6.

3N.4 The word 'appropriate' in CrimPR 3.2(4) and (5) is not a term of art. It has the ordinary English meaning of 'fitting', or 'suitable'. Whether the facilities available to the court in any particular case can be considered appropriate is a matter for the court, but plainly to be appropriate such facilities must work, at the time at which they are required; all participants must be able to hear and, in the case of a live link, see each other clearly; and there must be no extraneous noise, movement or other distraction suffered by a participant, or transmitted by a participant to others. What degree of protection from accidental or deliberate interception should be considered appropriate will depend upon the purpose for which a live link or telephone is to be used. If it is to participate in a hearing which is open to the public anyway, then what is communicated by such means is by definition public and the use of links such as Skype or Facetime, which are not generally considered secure from interception, may not be objectionable. If it is to participate in a hearing in private, and especially one at which sensitive information will be discussed – for example, on an application for a search warrant – then a more secure service is likely to be required.

3N.5 There may be circumstances in which the court should not require the use of live link or telephone facilities despite their being otherwise appropriate at a pre-trial hearing. In every case, in deciding whether any such circumstances apply the court will keep in mind that, for the purposes of what may be an essentially administrative hearing, it may be compatible with the overriding objective to proceed in the defendant's absence altogether, especially if he or she is represented, unless, exceptionally, a rule otherwise requires. The principle that the court always must consider proceeding in a defendant's absence is articulated in

CrimPR 3.9(2)(a). Where at a pre-trial hearing bail may be under consideration, the provisions of CrimPR 14.2 will be relevant.

3N.6 Such circumstances will include any case in which the defendant's effective participation cannot be achieved by his or her attendance by such means, and CrimPR 3.2(4) and (5) except such cases from the scope of the obligation which that rule otherwise imposes on the court. That exception may apply where (this list is not exhaustive) the defendant has a disorder or disability, including a hearing, speech or sight impediment, or has communication needs to which the use of a live link or telephone is inimical (whether or not those needs are such as to require the appointment of an intermediary); or where the defendant requires interpretation and effective interpretation cannot be provided by live link or telephone, as the case may be. In deciding whether to require a defendant to attend a first hearing in a magistrates' court by live link from a police station, the court should take into account any views expressed by the defendant, the terms of any mental health or other medical assessment of the defendant carried out at the police station, and all other relevant information and representations available. No single factor is determinative, but the court must keep in mind the terms of section 57C(6A) of the Crime and Disorder Act 1998 (Use of live link at preliminary hearings where accused is at police station) which provides that 'A live link direction under this section may not be given unless the court is satisfied that it is not contrary to the interests of justice to give the direction.'

3N.7 Finally, that exception sometimes may apply where the defendant's attendance in person at a pre-trial hearing will facilitate communication with his or her legal representatives. The court should not make such an exception merely to allow client and representatives to meet if that meeting can and should be held elsewhere. However, there will be cases in which defence representatives reasonably need to meet with a defendant, to take his or her instructions or to explain events to him or her, either shortly before or immediately after a pre-trial hearing and in circumstances in which that meeting cannot take place effectively by live link.

3N.8 Nothing prohibits the member or members of a court from conducting a pre-trial hearing by attending by live link or telephone from a location distant from all the other participants. Despite the conventional view that the venue for a court hearing is the court room in which that hearing has been arranged to take place, the Criminal Procedure Rules define 'court' as 'a tribunal with jurisdiction over criminal cases. It includes a judge, recorder, District Judge (Magistrates' Court), lay justice and, when exercising their judicial powers, the Registrar of Criminal Appeals, a justices'

clerk or assistant clerk.' Neither CrimPR 3.25 (Place of trial), which applies in the Crown Court, nor CrimPR 24.14 (Place of trial), which applies in magistrates' courts, each of which requires proceedings to take place in a courtroom provided by the Lord Chancellor, applies for the purposes of a pre-trial hearing. Thus for the purposes of such a hearing there is no legal obstacle to the judge, magistrate or magistrates conducting it from elsewhere, with other participants assembled in a courtroom from which the member or members of the court are physically absent. In principle, nothing prohibits the conduct of a pre-trial hearing by live link or telephone with each participant, including the member or members of the court, in a different location (an arrangement sometimes described as a 'virtual hearing'). This is dependent upon there being means by which that hearing can be witnessed by the public – for example, by public attendance at a courtroom or other venue from which the participants all can be seen and heard (if by live link), or heard (if by telephone). The principle of open justice to which paragraph 3N.17 refers is relevant.

3N.9 Sections 57A to 57F of the Crime and Disorder Act 1998 allow a defendant who is in custody to enter a plea by live link, and allow for such a defendant who attends by live link to be sentenced. In appropriate circumstances, the court may allow a defendant who is not in custody to enter a plea by live link; but the same considerations as apply to sentencing in such a case will apply: see paragraph 3N.13 beneath.

3N.10 The Crime and Disorder Act 1998 does not allow for the attendance by live link at a contested trial of a defendant who is in custody. The court may allow a defendant who wishes to do so to observe all or part of his or her trial by live link, whether she or he is in custody or not, but (a) such a defendant cannot lawfully give evidence by such means unless he or she satisfies the criteria prescribed by section 33A of the Youth Justice and Criminal Evidence Act 1999 and the court so orders under that section (see also CrimPR 18.14 – 18.17); (b) a defendant who is in custody and who observes the trial by live link is not present, as a matter of law, and the trial must be treated as taking place in his or her absence, she or he having waived the right to attend; and (c) a defendant who has refused to attend his or her trial when required to do so, or who has absconded, must not be permitted to observe the proceedings by live link.

3N.11 Paragraphs I 3D to 3G inclusive of these Practice Directions (Vulnerable people in the courts; Ground rules hearings to plan the questioning of a vulnerable witness or defendant; Intermediaries; Vulnerable defendants) contain directions relevant to the use of a live link as a special measure for a young or otherwise vulnerable witness, or to facilitate the giving of evidence by a defendant who

is likewise young or otherwise vulnerable, within the scope of the Youth Justice and Criminal Evidence Act 1999. Defence representatives and the court must keep in mind that special measures under the 1999 Act and CrimPR Part 18, including the use of a live link, are available to defence as well as to prosecution witnesses who meet the statutory criteria. Defence representatives should always consider whether their witnesses would benefit from giving evidence by live link and should apply for a direction if appropriate, either at the case management hearing or as soon as possible thereafter. A defence witness should be afforded the same facilities and treatment as a prosecution witness, including the same opportunity to make a pre-trial visit to the court building in order to familiarise himself or herself with it. Where a live link is sought as a special measure for a young or vulnerable witness or defendant, CrimPR 18.10 and 18.15 respectively require, among other things, that the applicant must identify someone to accompany that witness or defendant while they give evidence; must name the person, if possible; and must explain why that person would be an appropriate companion for that witness. The court must ensure that directions are given accordingly when ordering such a live link. Witness Service volunteers are available to support all witnesses, prosecution and defence, if required.

3N.12 Under sections 57A and 57D or 57E of the Crime and Disorder Act 1998 the court may pass sentence on a defendant in custody who attends by live link. The court may allow a defendant who is not in custody and who wishes to attend his or her sentencing by live link to do so, and may receive representations (but not evidence) from her or him by such means. Factors of which the court will wish to take account in exercising its discretion include, in particular, the penalty likely to be imposed; the importance of ensuring that the explanations of sentence required by CrimPR 24.11(9), in magistrates' courts, and in the Crown Court by CrimPR 25.16(7), can be given satisfactorily, for the defendant, for other participants and for the public, including reporters; and the preferences of the maker of any Victim Personal Statement which is to be read aloud or played pursuant to paragraph VII F.3(c) of these Practice Directions.

Youth defendants

3N.13 In the youth court or when a youth is appearing in the magistrates' court or the Crown Court, it will usually be appropriate for the youth to be produced in person at court. This is to ensure that the court can engage properly with the youth and that the necessary level of engagement can be facilitated with the Youth Offending Team worker, defence representative and/or appropriate adult. The court should deal with any application for use of a live-link on a case-by-case basis, after consultation with the parties and the Youth Offending Team. Such hearings that may be appropriate,

include, onward remand hearings at which there is no bail application or case management hearings, particularly if the youth is already serving a custodial sentence.

3N.14 It rarely will be appropriate for a youth to be sentenced over a live link. However, notwithstanding the court's duties of engagement with a youth, the overriding welfare principle and the statutory responsibility of the youth offending worker to explain the sentence to the youth, after consultation with the parties and the Youth Offending Team, there may be circumstances in which it may be appropriate to sentence a youth over the live-link:

a) If the youth is already serving a custodial sentence and the sentence to be imposed by the court is bound to be a further custodial sentence, whether concurrent or consecutive;
b) If the youth is already serving a custodial sentence and the court is minded to impose a non-custodial sentence which will have no material impact on the sentence being served;
c) The youth is being detained in a secure establishment at such a distance from the court that the travelling time from one to the other will be significant so as to materially affect the welfare of the youth;
d) The youth's condition-whether mental or otherwise- is so disturbed that his or her production would be a significant detriment to his or her welfare.

3N.15 Arrangements must be made in advance of any live link hearing to enable the youth offending worker to be at the secure establishment where the youth is in custody. In the event that such arrangements are not practicable, the youth offending worker must have sufficient access to the youth via the live link booth before and after the hearing.

Conduct of participants

3N.16 Where a live link is used, the immediate vicinity of the device by which a person attends becomes, temporarily, part of the courtroom for the purposes of that person's participation. That person, and any advocate or legal representative, custodian, court officer, intermediary or other companion, whether immediately visible to the court or not, becomes a participant for the purposes of CrimPR 1.2(2) and is subject to the court's jurisdiction to regulate behaviour in the courtroom. The substance and effect of this direction must be drawn to the attention of all such participants.

Open justice and records of proceedings

3N.17 The principle of open justice to which CrimPR 6.2(1) gives effect applies as strongly where electronic means of communication are used to conduct a hearing as it applies in other circumstances. Open justice is the principal means by which courts are kept under

scrutiny by the public. It follows that where a participant attends a hearing in public by live link or telephone then that person's participation must be, as nearly as may be, equally audible and, if applicable, equally visible to the public as it would be were he or she physically present. Where electronic means of communication are used to conduct a hearing, records of the event must be maintained in the usual way: CrimPR 5.4. In the Crown Court, this includes the recording of the proceedings: CrimPR 5.5.

CPD I General matters 3P: COMMISSIONING MEDICAL REPORTS

General observations

3P.1 CrimPR 24.3 and 25.10 concern procedures to be followed in magistrates' courts and in the Crown Court respectively where there is doubt about a defendant's mental health and, in the Crown Court, the defendant's capacity to participate in a trial. CrimPR 3.28 governs the procedure where, on the court's own initiative, a magistrates' court requires expert medical opinion about the potential suitability of a hospital order under section 37(3) of the Mental Health Act 1983 (hospital order without convicting the defendant), the Crown Court requires such opinion about the defendant's fitness to participate at trial, under section 4 of the Criminal Procedure (Insanity) Act 1964, or either a magistrates' court or the Crown Court requires such opinion to help the court determine a question of intent or insanity.

3P.2 Rule 3.28 governs the procedure to be followed where a report is commissioned at the instigation of the court. It is not a substitute for the prompt commissioning of a report or reports by a party or party's representatives where expert medical opinion is material to that party's case. In particular, those representing a defendant may wish to obtain a medical report or reports wholly independently of the court. Nothing in these directions, therefore, should be read as discouraging a party from commissioning a medical report before the case comes before the court, where that party believes such a report to be material to an issue in the case and where it is possible promptly to commission it. However, where a party has commissioned such a report then if that report has not been received by the time the court gives directions for preparation for trial, and if the court agrees that it seems likely that the report will be material to what is in issue, then when giving directions for trial the court should include a timetable for the reception of that report and should give directions for progress to be reviewed at intervals, adopting the timetable set out in these directions with such adaptations as are needed.

3P.3 In assessing the likely materiality of an expert medical report to help the court assess a defendant's health and capacity at the time of the alleged offence or the time of trial, or both, the court will be

assisted by the parties' representations; by the views expressed in any assessment that may already have been prepared; and by the views of practitioners in local criminal justice mental health services, whose assistance is available to the court under local liaison arrangements.

3P.4 Where the court requires the assistance of such a report then it is essential that there should be (i) absolute clarity about who is expected to do what, by when, and at whose expense; and (ii) judicial directions for progress with that report to be monitored and reviewed at prescribed intervals, following a timetable set by the court which culminates in the consideration of the report at a hearing. This is especially important where the report in question is a psychiatric assessment of the defendant for the preparation of which specific expertise may be required which is not readily available and because in some circumstances a second such assessment, by another medical practitioner, may be required.

Timetable for the commissioning, preparation and consideration of a report or reports

3P.5 CrimPR 3.28 requires the court to set a timetable appropriate to the case for the preparation and reception of a report. That timetable must not be in substitution for the usual timetable for preparation for trial but must instead be incorporated within the trial preparation timetable. The fact that a medical report is to be obtained, whether that is commissioned at a party's instigation or on the court's own initiative, is never a reason to postpone a preparation for trial or a plea and trial preparation hearing, or to decline to give the directions needed for preparation for trial. It follows that a trial date must be set and other directions given in the usual way.

3P.6 In setting the timetable for obtaining a report or reports the court will take account of such representations and other information that it receives, including information about the anticipated availability and workload of medical practitioners with the appropriate expertise. However, the timetable ought not be a protracted one. It is essential to keep in mind the importance of maintaining progress: in recognition of the defendant's rights and with respect for the interests of victims and witnesses, as required by CrimPR Part 1 (the overriding objective). In a magistrates' court account must be taken, too, of section 11 of the Powers of Criminal Courts (Sentencing) Act 2000, which limits the duration of each remand pending the preparation of a report to 3 weeks, where the defendant is to be in custody, and to 4 weeks if the defendant is to be on bail.

3P.7 Subject, therefore, to contrary judicial direction the timetable set by the court should require:

(a) the convening of a further pre-trial case management hearing to consider the report and its implications for the conduct of the proceedings no more than 6 – 8 weeks after the court makes its request in a magistrates' court, and no more than 10 – 12 weeks after the request in the Crown Court (at the end of Stage 2 of the directions for pre-trial preparation in the Crown Court);
(b) the prompt identification of an appropriate medical practitioner or practitioners, if not already identified by the court, and the despatch of a commission or commissions accordingly, within 2 business days of the court's decision to request a report;
(c) acknowledgement of a commission by its recipient, and acceptance or rejection of that commission, within 5 business days of its receipt;
(d) enquiries by court staff to confirm that the commission has been received, and to ascertain the action being taken in response, in the event that no acknowledgement is received within 10 business days of its despatch;
(e) delivery of the report within 5 weeks of the despatch of the commission;
(f) enquiries into progress by court staff in the event that no report is received within 5 weeks of the despatch of the commission.

3P.8 The further pre-trial case management hearing that is convened for the court to consider the report should not be adjourned before it takes place save in exceptional circumstances and then only by explicit judicial direction the reasons for which must be recorded. If by the time of that hearing the report is available, as usually should be the case, then at that hearing the court can be expected to determine the issue in respect of which the report was commissioned and give further directions accordingly. If by that time, exceptionally, the report is not available then the court should take the opportunity provided by that hearing to enquire into the reasons, give such directions as are appropriate, and if necessary adjourn the hearing to a fixed date for further consideration then. Where it is known in advance of that hearing that the report will not be available in time, the hearing may be conducted by live link or telephone: subject, in the defendant's case, to the same considerations as are identified at paragraph 3N.6 of these Practice Directions. However, it rarely will be appropriate to dispense altogether with that hearing, or to make enquiries and give further directions without any hearing at all, in view of the arrangements for monitoring and review that the court already will have directed and which, by definition therefore, thus far will have failed to secure the report's timely delivery.

3P.9 Where a requirement of the timetable set by the court is not met, or where on enquiry by court staff it appears that the timetable is unlikely to be met, and in any instance in which a medical practitioner who accepts a commission asks for more time, then court staff should not themselves adjust the timetable or accede to such a request but instead should seek directions from an appropriate judicial authority. Subject to local judicial direction, that will be, in the Crown Court, the judge assigned to the case or the resident judge and, in a magistrates' court, a District Judge (Magistrates' Courts) or justice of the peace assigned to the case, or the Justices' Clerk, an assistant clerk or other senior legal adviser. Even if the timetable is adjusted in consequence:

(a) the further pre-trial case management hearing convened to consider the report rarely should be adjourned before it takes place: see paragraph 3O.13 above;

(b) directions should be given for court staff henceforth to make regular enquiries into progress, at prescribed intervals of not more than 2 weeks, and to report the outcome to an appropriate judicial authority who will decide what further directions, if any, to give.

3P.10 Any adjournment of a hearing convened to consider the report should be to a specific date: the hearing should not be adjourned generally, or to a date to be set in due course. The adjournment of such a hearing should not be for more than a further 6 – 8 weeks save in the most exceptional circumstances; and no more than one adjournment of the hearing should be allowed without obtaining written or oral representations from the commissioned medical practitioner explaining the reasons for the delay.

Commissioning a report

3P.11 Guidance entitled 'Good practice guidance: commissioning, administering and producing psychiatric reports for sentencing' prepared for and published by the Ministry of Justice and HM Courts and Tribunals Service in September 2010 contains material that will assist court staff and those who are asked to prepare such reports:

http://www.ohrn.nhs.uk/resource/policy/GoodPracticeGuidePsychReports.pdf

The guidance includes standard forms of letters of instruction and other documents.

3P.12 CrimPR 3.28 requires the commissioner of a report to explain why the court seeks the report and to include relevant information about the circumstances. The HMCTS Guidance contains forms for judicial use in the instruction of court staff, and guidance to court staff on the preparation of letters of instruction, where a report is required for sentencing purposes. Those forms and that guidance

can be adapted for use where the court requires a report on the defendant's fitness to particpate, in the Crown Court, or in a magistrates' court requires a report for the purposes of section 37(3) of the Mental Health Act 1983.

3P.13 The commission should invite a practitioner who is unable to accept it promptly to nominate a suitably qualified substitute, if possible, and to transfer the commission to that person, reporting the transfer when acknowledging the court officer's letter. It is entirely appropriate for the commission to draw the recipient's attention to CrimPR 1.2 (the duty of the participants in a criminal case) and to CrimPR 19.2(1)(b) (the obligation of an expert witness to comply with directions made by a court and at once to inform the court of any significant failure, by the expert or another, to take any step required by such a direction).

3P.14 Where the relevant legislation requires a second psychiatric assessment by a second medical practitioner, and where no commission already has been addressed to a second such practitioner, the commission may invite the person to whom it is addressed to nominate a suitably qualified second person and to pass a copy of the commission to that person forthwith.

Funding arrangements

3P.15 Where a medical report has been, or is to be, commissioned by a party then that party is responsible for arranging payment of the fees incurred, even though the report is intended for the court's use. That must be made clear in that party's commission.

3P.16 Where a medical report is requested by the court and commissioned by a party or by court staff at the court's direction then the commission must include (i) confirmation that the fees will be paid by HMCTS, (ii) details of how, and to whom, to submit an invoice or claim for fees, and (iii) notice of the prescribed rates of fees and of any legislative or other criteria applicable to the calculation of the fees that may be paid.

Remand in custody

3P.17 Where the defendant who is to be examined will be remanded in custody then notice that directions have been given for a medical report or reports to be prepared must be included in the information given to the defendant's custodian, to ensure that the preparation of the report or reports can be facilitated. This is especially important where bail is withheld on the ground that it would be otherwise impracticable to complete the required report, and in particular where that is the only ground for withholding bail.

CPD I General matters 3Q: FAILURE TO COMPLY WITH REQUIREMENT TO GIVE NAME, DATE OF BIRTH AND NATIONALITY

3Q.1 Section 86A of the Courts Act 2003 requires a magistrates' court and the Crown Court to require a defendant to provide his or her name, date of birth and nationality in the circumstances and at the times set out in CrimPR 3.13(5) and 3.27(5). Section 86A(3) of the Act makes it an offence for the defendant without reasonable excuse to fail to comply with such a requirement, whether by providing false or incomplete information or by providing no information. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine, or both. It follows that a prosecution for failure to comply with a section 86A requirement may be brought by any of the procedures for which CrimPR Part 7 provides (Starting a prosecution in a magistrates' court) in the same way as any other allegation of a summary offence.

3Q.2 It does not follow, however, that every such allegation first must be reported to the police. Where the defendant's conduct evinces guilt, especially if the defendant refuses altogether to give the information required, such conduct undermines the administration of justice and the authority of the court. In principle, it should be dealt with at once. Section 86A(6) of the Act provides that, 'The criminal court before which a person is required to provide his or her name, date of birth and nationality may deal with any suspected offence under subsection (3) at the same time as dealing with the offence for which the person was already before the court'. In such a case, therefore, a magistrates' court may invite the prosecutor to institute proceedings orally, there and then, pursuant to section 1 of the Magistrates' Courts Act 1980 and CrimPR Part 7, and may there and then try the alleged offence in accordance with the rules in CrimPR Part 24 (Trial and sentence in a magistrates' court). A defendant should be allowed a reasonable opportunity to reflect and to take legal advice, from a duty solicitor if the defendant has no legal representative in the prosecution for the main offence. After that, unless the defendant then pleads guilty the prosecutor must call such evidence as may be convenient and sufficient, in the prosecutor's view, formally to prove the allegation; and the defendant may present evidence, for example of reasonable excuse, and may make representations in accordance with those rules.

3Q.3 Given that the Act expressly contemplates a prompt determination by the court before which there occurs an ostensible failure to comply with a section 86A requirement, rarely will it be necessary or appropriate to adjourn the trial of that allegation to a differently constituted court unless there emerges such a dispute of fact about what has occurred in the sight and hearing of the court as to disqualify the first bench from determining that dispute with

perceived impartiality. In that rare event the trial of the allegation must be heard, the same day, by a different bench.**a** In any other event the constitution before whom the alleged offence under section 86A(3) has occurred usually should try the allegation, usually the same day.

3Q.4 If in the circumstances contemplated in the preceding paragraph a different bench convicts the defendant of the section 86A(3) offence, and if the defendant is convicted by the first bench of the offence for which the defendant was already before the court, then the court which passes sentence for that main offence should pass sentence also under section 86A(3). However, an offence under section 86A(3) is one that stands apart from the proceedings in the course of which it was committed the seriousness of which can be reflected by an appropriate and, generally, separate penalty.

3Q.5 Whether an alleged contravention of a section 86A requirement is dealt with the same day or later, after investigation by the police, no member of the court before whom the alleged contravention occurs should participate in the proceedings as the complainant or as a witness. Nor will it be appropriate to invite the defendant's representative, if any, to give evidence of what that representative may have witnessed in the court room. It is unexceptionable for court staff, including a legal adviser in a magistrates' court, to be asked to give evidence of what has taken place.

3Q.6 The offence contrary to section 86A(3) of the 2003 Act is one to which the time limit imposed by section 127 of the Magistrates' Courts Act 1980 applies, namely that a magistrates' court may not try an information unless that information was laid within 6 months from the time when the offence was committed. Where the court does not adopt the procedure described in paragraphs 3Q.2 and 3Q.3 above the alleged offence must be reported promptly to allow it to be investigated and, if appropriate, prosecuted in time.

CPD I General matters 3R: HEARING TO INFORM THE COURT OF SENSITIVE MATERIAL

3R.1 CrimPR 3.29 (Hearing to inform the court of sensitive material) governs the procedure that must be followed where a prosecutor has, or is aware of, sensitive material to which the prosecutor does not think the obligation to disclose applies but of the existence of

a The risk is that a constitution which witnesses a defendant's refusal to give the information required will not be perceived to adjudicate impartially on a contention that, as a matter of fact, and against the prosecution evidence, the defendant was not asked for the information or did not refuse to give it. If that were the defence then the court would, of course, offer the defendant a renewed opportunity to comply with the requirement and only if that further opportunity were declined would the prosecution for the section 86A(3) offence be adjourned to a different bench. Such circumstances may be expected to arise only wholly exceptionally.

which the prosecutor thinks it necessary to inform the court in order to mitigate the risks listed in that rule.

3R.2 Examples of such material were given by the Court of Appeal in *R v Ali* [2019] EWCA Crim 1527. Examples include information about the activities of a defendant or witness, or about a person to whom the evidence in the case refers, or information to the effect that the prosecution evidence omits matters irrelevant to the trial, derived from observations, for example, which is of sensitivity in some other respect. These are, however, only examples and other material may come within the scope of the rule.

3R.3 In the Crown Court a hearing to which rule 3.29 applies must be recorded: CrimPR 5.5 (Recording and transcription of proceedings in the Crown Court). It is very likely that the hearing will be conducted in private (see CrimPR 3.29(4)) and very likely that it will take place in a private room rather than in the courtroom. The recording therefore should be made using a suitable and suitably secure device, and it should be stored securely. In some circumstances that may require arrangements for the storage of the recording to be dealt with in accordance with CrimPR 3.29(4)(c)(ii) (storage by an appropriate person other than the court officer). Such storage arrangements are likely also to apply to any written material provided to the court under CrimPR 3.29(3)(c).

CrimPR Part 5 Forms and court records

CPD I General matters 5A: FORMS

5A.1 The forms at Annex D to the Consolidated Criminal Practice Direction of 8th July, 2002, [2002] 1 W.L.R. 2870; [2002] 2 Cr. App. R. 35, or forms to that effect, are to be used in the criminal courts, in accordance with CrimPR 5.1.

5A.2 The forms at Annex E to that Practice Direction, the case management forms, must be used in the criminal courts, in accordance with that rule.

5A.3 The table at the beginning of each section of each of those Annexes lists the forms and:

(a) shows the rule in connection with which each applies;

(b) describes each form.

5A.4 The forms may be amended or withdrawn from time to time, or new forms added, under the authority of the Lord Chief Justice.

CPD I General matters 5B: ACCESS TO INFORMATION HELD BY THE COURT

5B.1 Open justice, as Lord Justice Toulson re-iterated in the case of *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618, is a 'principle at the heart of our system of justice and vital to the rule of law'. There are exceptions but these 'have to be justified by some even more important principle.' However, the practical application of that undisputed principle, and the proper balancing of conflicting rights and principles, call for careful judgments to be made. The following is intended to provide some assistance to courts making decisions when asked to provide the public, including journalists, with access to or copies of information and documents held by the court, or when asked, exceptionally, to forbid the supply of transcripts that otherwise would have been supplied. It is not a prescriptive list, as the court will have to consider all the circumstances of each individual case.

5B.2 It remains the responsibility of the recipient of information or documents to ensure that they comply with any and all restrictions such as reporting restrictions (see Part 6 and the accompanying Practice Direction).

5B.3 For the purposes of this direction, the word document includes images in photographic, digital including DVD format, video, CCTV or any other form.

5B.4 Certain information can and should be provided to the public on request, subject to any restrictions, such as reporting restrictions, imposed in that particular case. CrimPR 5.5 governs the supply of transcript of a recording of proceedings in the Crown Court. CrimPR 5.8(4) and 5.8(6) read together specify the information that the court officer will supply to the public; an oral application is acceptable and no reason need be given for the request. There is no requirement for the court officer to consider the non-disclosure provisions of the Data Protection Act 1998 as the exemption under section 35 applies to all disclosure made under 'any enactment … or by the order of a court', which includes under the Criminal Procedure Rules.

5B.5 If the information sought is neither transcript nor listed at CrimPR 5.8(6), rule 5.8(7) will apply, and the provision of information is at the discretion of the court. The following guidance is intended to assist the court in exercising that discretion.

5B.6 A request for access to documents used in a criminal case should first be addressed to the party who presented them to the court or who, in the case of a written decision by the court, received that decision. Prosecuting authorities are subject to the Freedom of

Information Act 2000 and the Data Protection Act 1998 and their decisions are susceptible to review.

5B.7 If the request is from a journalist or media organisation, note that there is a protocol between the NPCC, the CPS and the media entitled 'Publicity and the Criminal Justice System':

www.cps.gov.uk/publications/agencies/mediaprotocol.html

www.cps.gov.uk/publication/publicity-and-criminal-justice-system

There is additionally a protocol made under CrimPR 5.8(5)(b) between the media and HMCTS:

www.newsmediauk.org/write/MediaUploads/PDF%20Docs/Protocol_for_Sharing_Court_Documents.pdf

This Practice Direction does not affect the operation of those protocols. Material should generally be sought under the relevant protocol before an application is made to the court.

5B.8 An application to which CrimPR 5.8(7) applies must be made in accordance with rule 5.8; it must be in writing, unless the court permits otherwise, and 'must explain for what purpose the information is required.' A clear, detailed application, specifying the name and contact details of the applicant, whether or not he or she represents a media organisation, and setting out the reasons for the application and to what use the information will be put, will be of most assistance to the court. Applicants should state if they have requested the information under a protocol and include any reasons given for the refusal. Before considering such an application, the court will expect the applicant to have given notice of the request to the parties.

5B.9 The court will consider each application on its own merits. The burden of justifying a request for access rests on the applicant. Considerations to be taken into account will include:

i. whether or not the request is for the purpose of contemporaneous reporting; a request after the conclusion of the proceedings will require careful scrutiny by the court;
ii. the nature of the information or documents being sought;
iii. the purpose for which they are required;
iv. the stage of the proceedings at the time when the application is made;

v. the value of the documents in advancing the open justice principle, including enabling the media to discharge its role, which has been described as a 'public watchdog', by reporting the proceedings effectively;
vi. any risk of harm which access to them may cause to the legitimate interests of others; and
vii. any reasons given by the parties for refusing to provide the material requested and any other representations received from the parties.

Further, all of the principles below are subject to any specific restrictions in the case. Courts should be aware that the risk of providing a document may reduce after a particular point in the proceedings, and when the material requested may be made available.

Documents read aloud in their entirety

5B.10 If a document has been read aloud to the court in its entirety, it should usually be provided on request, unless to do so would be disruptive to the court proceedings or place an undue burden on the court, the advocates or others. It may be appropriate and convenient for material to be provided electronically, if this can be done securely.

5B.11 Documents likely to fall into this category are:

i. Opening notes
ii. Statements agreed under section 9 of the Criminal Justice Act 1967, including experts' reports, if read in their entirety
iii. Admissions made under section 10 of the Criminal Justice Act 1967.

Documents treated as read aloud in their entirety

5B.12 A document treated by the court as if it had been read aloud in public, though in fact it has been neither read nor summarised aloud, should generally be made available on request. The burden on the court, the advocates or others in providing the material should be considered, but the presumption in favour of providing the material is greater when the material has only been treated as having been read aloud. Again, subject to security considerations, it may be convenient for the material to be provided electronically.

5B.13 Documents likely to fall into this category include:

i. Skeleton arguments
ii. Written submissions
iii. Written decisions by the court

Documents read aloud in part or summarised aloud

5B.14 Open justice requires only access to the part of the document that has been read aloud. If a member of the public requests a copy of such a document, the court should consider whether it is proportionate to order one of the parties to produce a suitably redacted version. If not, access to the document is unlikely to be granted; however open justice will generally have been satisfied by the document having been read out in court.

5B.15 If the request comes from an accredited member of the press (see *Access by reporters* below), there may be circumstances in which the court orders that a copy of the whole document be shown to the reporter, or provided, subject to the condition that those matters that had not been read out to the court may not be used or reported. A breach of such an order would be treated as a contempt of court.

5B.16 Documents in this category are likely to include:

i. Section 9 statements that are edited

Jury bundles and exhibits (including video footage shown to the jury)

5B.17 The court should consider:

i. whether access to the specific document is necessary to understand or effectively to report the case;
ii. the privacy of third parties, such as the victim (in some cases, the reporting restriction imposed by section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926 will apply (indecent or medical matter));
iii. whether the reporting of anything in the document may be prejudicial to a fair trial in this or another case, in which case whether it may be necessary to make an order under section 4(2) of the Contempt of Court Act 1981.

The court may order one of the parties to provide a copy of certain pages (or parts of the footage), but these should not be provided electronically.

Statements of witnesses who give oral evidence

5B.18 A witness statement does not become evidence unless it is agreed under section 9 of the Criminal Justice Act 1967 and presented to the court. Therefore the statements of witnesses who give oral evidence, including ABE interview and transcripts and experts' reports, should not usually be provided. Open justice is generally satisfied by public access to the court.

Confidential documents

5B.19 A document the content of which, though relied upon by the court, has not been communicated to the public or reporters, nor treated

as if it had been, is likely to have been supplied in confidence and should be treated accordingly. This will apply even if the court has made reference to the document or quoted from the document. There is most unlikely to be a sufficient reason to displace the expectation of confidentiality ordinarily attaching to a document in this category, and it would be exceptional to permit the inspection or copying by a member of the public or of the media of such a document. The rights and legitimate interests of others are likely to outweigh the interests of open justice with respect these documents.

5B.20 Documents in this category are likely to include:

i. Pre-sentence reports
ii. Medical reports
iii. Victim Personal Statements
iv. Reports and summaries for confiscation

Prohibitions against the provision of information

5B.21 Statutory provisions may impose specific prohibitions against the provision of information. Those most likely to be encountered are listed in the note to CrimPR 5.8 and include the Rehabilitation of Offenders Act 1974, section 18 of the Criminal Procedure and Investigations Act 1996 ("unused material" disclosed by the prosecution), sections 33, 34 and 35 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO Act 2012') (privileged information furnished to the Legal Aid Agency) and reporting restrictions generally.

5B.22 Reports of allocation or sending proceedings are restricted by section 52A of the Crime and Disorder Act 1998, so that only limited information, as specified in the statute, may be reported, whether it is referred to in the courtroom or not. The magistrates' court has power to order that the restriction shall not apply; if any defendant objects the court must apply the interests of justice test as specified in section 52A. The restriction ceases to apply either after all defendants indicate a plea of guilty, or after the conclusion of the trial of the last defendant to be tried. If the case does not result in a guilty plea, a finding of guilt or an acquittal, the restriction does not lift automatically and an application must be made to the court.

5B.23 Extradition proceedings have some features in common with committal proceedings, but no automatic reporting restrictions apply.

5B.24 Public Interest Immunity and the rights of a defendant, witnesses and victims under Article 6 and 8 of the European Convention on Human Rights may also restrict the power to release material to third parties.

Other documents

5B.25 The following table indicates the considerations likely to arise on an application to inspect or copy other documents.

Document	Considerations
Charge sheet Indictment	The alleged offence(s) will have been read aloud in court, and their terms must be supplied under CrimPR 5.8(4)
Material disclosed under CPIA 1996	To the extent that the content is deployed at trial, it becomes public at that hearing. Otherwise, it is a criminal offence for it to be disclosed: section 18 of the 1996 Act.
Written notices, applications, replies (including any application for representation)	To the extent that evidence is introduced, or measures taken, at trial, the content becomes public at that hearing. A statutory prohibition against disclosure applies to an application for representation: sections 33, 34 and 35 of the LASPO Act 2012.
Written decisions by the court, other than those read aloud in public or treated as if so read	Such decisions should usually be provided, subject to the criteria listed in CrimPR 5.8(4)(a) (and see also paragraph 5B.31 below).
Sentencing remarks	Sentencing remarks should usually be provided to the accredited Press, if the judge was reading from a prepared script which was handed out immediately afterwards; if not, then permission for a member of the accredited Press to obtain a transcript should usually be given (see also paragraphs 26 and 29 below).
Official recordings	See CrimPR 5.5.
Transcript	See CrimPR 5.5 (and see also paragraphs 5B.32 to 36 below).

Access by reporters

5B.26 Under CrimPR Part 5, the same procedure applies to applications for access to information by reporters as to other members of the public. However, if the application is made by legal representatives instructed by the media, or by an accredited member of the media, who is able to produce in support of the application a valid Press Card (http://www.ukpresscardauthority.co.uk/) then there is a greater presumption in favour of providing the requested material,

in recognition of the press' role as 'public watchdog' in a democratic society (*Observer and Guardian v United Kingdom* (1992) 14 E.H.R.R. 153, Times November 27, 1991). The general principle in those circumstances is that the court should supply documents and information unless there is a good reason not to in order to protect the rights or legitimate interests of others and the request will not place an undue burden on the court (*R(Guardian News and Media Ltd)* at [87]). Subject to that, the paragraphs above relating to types of documents should be followed.

5B.27 Court staff should usually verify the authenticity of cards, checking the expiry date on the card and where necessary may consider telephoning the number on the reverse of the card to verify the card holder. Court staff may additionally request sight of other identification if necessary to ensure that the card holder has been correctly identified. The supply of information under CrimPR 5.8(7) is at the discretion of the court, and court staff must ensure that they have received a clear direction from the court before providing any information or material under rule 5.8(7) to a member of the public, including to the accredited media or their legal representatives.

5B.28 Opening notes and skeleton arguments or written submissions, once they have been placed before the court, should usually be provided to the media. If there is no opening note, permission for the media to obtain a transcript of the prosecution opening should usually be given (see below). It may be convenient for copies to be provided electronically by counsel, provided that the documents are kept suitably secure. The media are expected to be aware of the limitations on the use to which such material can be put, for example that legal argument held in the absence of the jury must not be reported before the conclusion of the trial.

5B.29 The media should also be able to obtain transcripts of hearings held in open court directly from the transcription service provider, on payment of any required fee. The service providers commonly require the judge's authorisation before they will provide a transcript, as an additional verification to ensure that the correct material is released and reporting restrictions are noted. However, responsibility for compliance with any restriction always rests with the person receiving the information or material: see CPD I General matters 6B, beneath.

5B.30 It is not for the judge to exercise an editorial judgment about 'the adequacy of the material already available to the paper for its journalistic purpose' (*Guardian* at 82) but the responsibility for complying with the Contempt of Court Act 1981 and any and all restrictions on the use of the material rests with the recipient.

Written decisions

5B.31 Where the Criminal Procedure Rules allow for a determination without a hearing there may be occasions on which it furthers the overriding objective to deliver the court's decision to the parties in writing, without convening a public hearing at which that decision will be pronounced: on an application for costs made at the conclusion of a trial, for example. If the only reason for delivering a decision in that way is to promote efficiency and expedition and if no other consideration arises then usually a copy of the decision should be provided in response to any request once the decision is final. However, had the decision been announced in public then the criteria in CrimPR 5.8(4)(a) would have applied to the supply of information by the court officer; and ordinarily those same criteria should be applied by the court, therefore. Moreover, where considerations other than efficiency and expedition have influenced the court's decision to reach a determination without convening a hearing then those same considerations may be inimical to the supply of the written decision to any applicant other than a party. Reporting restrictions may be relevant, for example; as may the considerations listed in paragraph 5B.9 above. In such a case the court should consider supplying a redacted version of the decision in response to a request by anyone who is not a party; or it may be appropriate to give the decision in terms that can be supplied to the public, supplemented by additional reasons provided only to the parties.

Transcript

5B.32 CrimPR 5.5 does not require an application to the court for transcript, nor does the rule anticipate recourse to the court for a judicial decision about the supply of transcript in any but unusual circumstances. Ordinarily it is the rule itself that determines the circumstances in which the transcriber of a recording may or may not supply transcript to an applicant.

5B.33 Where reporting restrictions apply to information contained in the recording from which the transcript is prepared then unless the court otherwise directs it is for the transcriber to redact that transcript where redaction is necessary to permit its supply to that applicant. Having regard to the terms of the statutes that impose reporting restrictions, however, it is unlikely that redaction will be required frequently. Statutory restrictions prohibit publication 'to the public at large or any section of the public', or some comparable formulation. They do not ordinarily prohibit a publication constituted only of the supply of transcript to an individual applicant. However, any reporting restrictions will continue to apply to a recipient of transcript, and where they apply the recipient must be alerted to them by the endorsement on the transcript of a suitable warning notice, to this or the like effect:

"WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice."

5B.34 Exceptionally, court staff may invite the court to direct that transcript must be redacted before it is supplied to an applicant, or that transcript must not be supplied to an applicant pending the supply of further information or assurances by that applicant, or at all, in exercise of the judicial discretion to which CrimPR 5.5(2) refers. Circumstances giving rise to concern may include, for example, the occurrence of events causing staff reasonably to suspect that an applicant intends or is likely to disregard a reporting restriction that applies, despite the warning notice endorsed on the transcript, or reasonably to suspect that an applicant has malicious intentions towards another person. Given that the proceedings will have taken place in public, despite any such suspicions cogent and compelling reasons will be required to deny a request for transcript of such proceedings and the onus rests always on the court to justify such a denial, not on the applicant to justify the request. Even where there are reasons to suspect a criminal intent, the appropriate course may be to direct that the police be informed of those reasons rather than to direct that the transcript be withheld. Nevertheless, it may be appropriate in such a case to direct that an application for the transcript should be made which complies with paragraph 5B.8 above (even though that paragraph does not apply); and then for the court to review that application with regard to the considerations listed in paragraph 5B.9 above (but the usual burden of justifying a request under that paragraph does not apply).

5B.35 Some applicants for transcript may be taken to be aware of the significance of reporting restrictions, where they apply, and, by reason of such an applicant's statutory or other public or quasi-public functions, in any event unlikely to contravene any such restriction. Such applicants include public authorities within the meaning of section 6 of the Human Rights Act 1998 (a definition which extends to government departments and their agencies, local authorities, prosecuting authorities, and institutions such as the Parole Board and the Sentencing Council) and include public or private bodies exercising disciplinary functions in relation to

practitioners of a regulated profession such as doctors, lawyers, accountants, etc. It would be only in the most exceptional circumstances that a court might conclude that any such body should not receive unredacted transcript of proceedings in public, irrespective of whether reporting restrictions do or do not apply.

5B.36 The rule imposes no time limit on a request for the supply of transcript. The assumption is that transcript of proceedings in public in the Crown Court will continue to be available for as long as relevant records are maintained by the Lord Chancellor under the legislation to which CrimPR 5.4 refers.

CPD I General matters: 5C ISSUE OF MEDICAL CERTIFCATES

5C.1 Doctors will be aware that medical notes are normally submitted by defendants in criminal proceedings as justification for not answering bail. Medical notes may also be submitted by witnesses who are due to give evidence and jurors.

5C.2 If a medical certificate is accepted by the court, this will result in cases (including contested hearings and trials) being adjourned rather than the court issuing a warrant for the defendant's arrest without bail. Medical certificates will also provide the defendant with sufficient evidence to defend a charge of failure to surrender to bail.

5C.3 However, a court is not absolutely bound by a medical certificate. The medical practitioner providing the certificate may be required by the court to give evidence. Alternatively the court may exercise its discretion to disregard a certificate which it finds unsatisfactory: *R V Ealing Magistrates' Court Ex P. Burgess [2001] 165 J.P. 82*

5C.4 Circumstances where the court may find a medical certificate unsatisfactory include:

(a) Where the certificate indicates that the defendant is unfit to attend work (rather than to attend court);
(b) Where the nature of the defendant's ailment (e.g. a broken arm) does not appear to be capable of preventing his attendance at court;
(c) Where the defendant is certified as suffering from stress/anxiety/depression and there is no indication of the defendant recovering within a realistic timescale.

5C.5 It therefore follows that the minimum standards a medical certificate should set out are:

(a) The date on which the medical practitioner examined the defendant;
(b) The exact nature of the defendants ailments

(c) If it is not self-evident, why the ailment prevents the defendant attending court;
(d) An indication as to when the defendant is likely to be able to attend court, or a date when the current certificate expires.

5C.6 Medical practitioners should be aware that when issuing a certificate to a defendant in criminal proceedings they make themselves liable to being summonsed to court to give evidence about the content of the certificate, and they may be asked to justify their statements.

CrimPR Part 6 Reporting, etc. restrictions

CPD I General matters 6A: UNOFFICIAL SOUND RECORDING OF PROCEEDINGS

6A.1 Section 9 of the Contempt of Court Act 1981 contains provisions governing the unofficial use of equipment for recording sound in court.

Section 9(1) provides that it is a contempt of court

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the permission of the court;
(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;
(c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).

These provisions do not apply to the making or use of sound recordings for purposes of official transcripts of the proceedings, upon which the Act imposes no restriction whatever.

6A.2 The discretion given to the court to grant, withhold or withdraw leave to use equipment for recording sound or to impose conditions as to the use of the recording is unlimited, but the following factors may be relevant to its exercise:

(a) the existence of any reasonable need on the part of the applicant for leave, whether a litigant or a person connected with the press or broadcasting, for the recording to be made;
(b) the risk that the recording could be used for the purpose of briefing witnesses out of court;
(c) any possibility that the use of the recorder would disturb the proceedings or distract or worry any witnesses or other participants.

6A.3 Consideration should always be given whether conditions as to the use of a recording made pursuant to leave should be imposed. The identity and role of the applicant for leave and the nature of the subject matter of the proceedings may be relevant to this.

6A.4 The particular restriction imposed by section 9(1)(b) applies in every case, but may not be present in the mind of every applicant to whom leave is given. It may therefore be desirable on occasion for this provision to be drawn to the attention of those to whom leave is given.

6A.5 The transcript of a permitted recording is intended for the use of the person given leave to make it and is not intended to be used as, or to compete with, the official transcript mentioned in section 9(4).

6A.6 Where a contravention of section 9(1) is alleged, the procedure in section 2 of Part 48 of the Rules should be followed. Section 9(3) of the 1981 Act permits the court to 'order the instrument, or any recording made with it, or both, to be forfeited'. The procedure at CrimPR 6.10 should be followed.

CPD I General matters 6B: RESTRICTIONS ON REPORTING PROCEEDINGS

6B.1 Open justice is an essential principle in the criminal courts but the principle is subject to some statutory restrictions. These restrictions are either automatic or discretionary. Guidance is provided in the joint publication, Reporting Restrictions in the Criminal Courts issued by the Judicial College, the Newspaper Society, the Society of Editors and the Media Lawyers Association. The current version is the fourth edition and has been updated to be effective from May 2015.

6B.2 Where a restriction is automatic no order can or should be made in relation to matters falling within the relevant provisions. However, the court may, if it considers it appropriate to do so, give a reminder of the existence of the automatic restriction. The court may also discuss the scope of the restriction and any particular risks in the specific case in open court with representatives of the press present. Such judicial observations cannot constitute an order binding on the editor or the reporter although it is anticipated that a responsible editor would consider them carefully before deciding what should be published. It remains the responsibility of those reporting a case to ensure that restrictions are not breached.

6B.3 Before exercising its discretion to impose a restriction the court must follow precisely the statutory provisions under which the

order is to be made, paying particular regard to what has to be established, by whom and to what standard.

6B.4 Without prejudice to the above paragraph, certain general principles apply to the exercise of the court's discretion:

(a) The court must have regard to CrimPR Parts 6 and 18.

(b) The court must keep in mind the fact that every order is a departure from the general principle that proceedings shall be open and freely reported.

(c) Before making any order the court must be satisfied that the purpose of the proposed order cannot be achieved by some lesser measure e.g. the grant of special measures, screens or the clearing of the public gallery (usually subject to a representative/s of the media remaining).

(d) The terms of the order must be proportionate so as to comply with Article 10 ECHR (freedom of expression).

(e) No order should be made without giving other parties to the proceedings and any other interested party, including any representative of the media, an opportunity to make representations.

(f) Any order should provide for any interested party who has not been present or represented at the time of the making of the order to have permission to apply within a limited period e.g. 24 hours.

(g) The wording of the order is the responsibility of the judge or Bench making the order: it must be in precise terms and, if practicable, agreed with the advocates.

(h) The order must be in writing and must state:

(i) the power under which it is made;

(ii) its precise scope and purpose; and

(iii) the time at which it shall cease to have effect, if appropriate.

(i) The order must specify, in every case, whether or not the making or terms of the order may be reported or whether this itself is prohibited. Such a report could cause the very mischief which the order was intended to prevent.

6B.5 A series of template orders have been prepared by the Judicial College and are available as an appendix to the Crown Court Bench Book Companion; these template orders should generally be used.

6B.6 A copy of the order should be provided to any person known to have an interest in reporting the proceedings and to any local or national media who regularly report proceedings in the court.

6B.7 Court staff should be prepared to answer any enquiry about a specific case; but it is and will remain the responsibility of anyone reporting a case to ensure that no breach of any order occurs and the onus rests on such person to make enquiry in case of doubt.

CPD I General matters 6C: USE OF LIVE TEXT-BASED FORMS OF COMMUNICATION (INCLUDING TWITTER) FROM COURT FOR THE PURPOSES OF FAIR AND ACCURATE REPORTING

6C.1 This part clarifies the use which may be made of live text-based communications, such as mobile email, social media (including Twitter) and internet-enabled laptops in and from courts throughout England and Wales. For the purpose of this part these means of communication are referred to, compendiously, as 'live text-based communications'. It is consistent with the legislative structure which:

(a) prohibits:

(i) the taking of photographs in court (section 41 of the Criminal Justice Act 1925);

(ii) the use of sound recording equipment in court unless the leave of the judge has first been obtained (section 9 of the Contempt of Court Act 1981); and

(b) requires compliance with the strict prohibition rules created by sections 1, 2 and 4 of the Contempt of Court Act 1981 in relation to the reporting of court proceedings.

General Principles

6C.2 The judge has an overriding responsibility to ensure that proceedings are conducted consistently, with the proper administration of justice, and to avoid any improper interference with its processes.

6C.3 A fundamental aspect of the proper administration of justice is the principle of open justice. Fair and accurate reporting of court proceedings forms part of that principle. The principle is, however, subject to well-known statutory and discretionary exceptions. Two such exceptions are the prohibitions, set out in paragraph 6C.1(a), on photography in court and on making sound recordings of court proceedings.

6C.4 The statutory prohibition on photography in court, by any means, is absolute. There is no judicial discretion to suspend or dispense with it. Any equipment which has photographic capability must not have that function activated.

6C.5 Sound recordings are also prohibited unless, in the exercise of its discretion, the court permits such equipment to be used. In criminal proceedings, some of the factors relevant to the exercise of that discretion are contained in paragraph 6A.2. The same factors are likely to be relevant when consideration is being given to the exercise of this discretion in civil or family proceedings.

Use of Live Text-based Communications: General Considerations

6C.6 The normal, indeed almost invariable, rule has been that mobile phones must be turned off in court. There is however no statutory prohibition on the use of live text-based communications in open court.

6C.7 Where a member of the public, who is in court, wishes to use live text-based communications during court proceedings an application for permission to activate and use, in silent mode, a mobile phone, small laptop or similar piece of equipment, solely in order to make live text-based communications of the proceedings will need to be made. The application may be made formally or informally (for instance by communicating a request to the judge through court staff).

6C.8 It is presumed that a representative of the media or a legal commentator using live text-based communications from court does not pose a danger of interference to the proper administration of justice in the individual case. This is because the most obvious purpose of permitting the use of live text-based communications would be to enable the media to produce fair and accurate reports of the proceedings. As such, a representative of the media or a legal commentator who wishes to use live text-based communications from court may do so without making an application to the court.

6C.9 When considering, either generally on its own motion, or following a formal application or informal request by a member of the public, whether to permit live text-based communications, and if so by whom, the paramount question for the judge will be whether the application may interfere with the proper administration of justice.

6C.10 In considering the question of permission, the factors listed in paragraph 6A.2 are likely to be relevant.

6C.11 Without being exhaustive, the danger to the administration of justice is likely to be at its most acute in the context of criminal trials e.g., where witnesses who are out of court may be informed of what has already happened in court and so coached or briefed before they then give evidence, or where information posted on, for instance, Twitter about inadmissible evidence may influence members of the jury. However, the danger is not confined to

criminal proceedings; in civil and sometimes family proceedings, simultaneous reporting from the courtroom may create pressure on witnesses, by distracting or worrying them.

6C.12 It may be necessary for the judge to limit live text-based communications to representatives of the media for journalistic purposes but to disallow its use by the wider public in court. That may arise if it is necessary, for example, to limit the number of mobile electronic devices in use at any given time because of the potential for electronic interference with the court's own sound recording equipment, or because the widespread use of such devices in court may cause a distraction in the proceedings.

6C.13 Subject to these considerations, the use of an unobtrusive, hand-held, silent piece of modern equipment, for the purposes of simultaneous reporting of proceedings to the outside world as they unfold in court, is generally unlikely to interfere with the proper administration of justice.

6C.14 Permission to use live text-based communications from court may be withdrawn by the court at any time.

CPD I General matters 6D: TAKING NOTES IN COURT

6D.1 As long as it does not interfere with the proper administration of justice, anyone who attends a court hearing may quietly take notes, on paper or by silent electronic means. If that person is a participant, including an expert witness who is in the courtroom under CrimPR 24.4(2)(a)(ii) or 25.11(2)(a)(ii), note taking may be an essential aid to that person's own or (if they are a representative) to their client's effective participation. If that person is a reporter or a member of the public, attending a hearing to which, by definition, they have been admitted, note taking is a feature of the principle of open justice. The permission of the court is not required, and the distinctions between members of the public and others which are drawn at paragraphs 6C.7 and 6C.8 of these Practice Directions do not apply.

6D.2 However, where there is reason to suspect that the taking of notes may be for an unlawful purpose, or that it may disrupt the proceedings, then it is entirely proper for court staff to make appropriate enquiries, and ultimately it is within the power of the court to prohibit note taking by a specified individual or individuals in the court room if that is necessary and proportionate to prevent unlawful conduct. If, for example, there is reason to believe that notes are being taken in order to influence the testimony of a witness who is due to give evidence, perhaps by briefing that witness on what another witness has said, then because such conduct is unlawful (it is likely to be in contempt of

court, and it may constitute a perversion of the course of justice) it is within the court's power to prohibit such note taking. If there is reason to believe that what purports to be taking notes with an electronic device is in fact the transmission of live text-based communications from court without the permission required by paragraph 6C.7 of these Practice Directions, or where permission to transmit such communications has been withdrawn under paragraph 6C.14, then that, too, would constitute grounds for prohibiting the taking of such notes.

6D.3 The existence of a reporting restriction, without more, is not a sufficient reason to prohibit note taking (though it may need to be made clear to those who take notes that the reporting restriction affects how much, if any, of what they have noted may be communicated to anyone else). However, if there is reason to believe that notes are being taken in order to facilitate the contravention of a reporting restriction then that, too, would constitute grounds for prohibiting such note taking.

CPD I General matters 6E: ACCESS TO COURTS

Proceedings before the Crown Court

6E.1 The right of the public to access court rooms to observe proceedings is a fundamental part of open justice, and good practice will ensure that the public are able to view proceedings quietly, and without causing interruption, as far as is possible.

6E.2 However, as observed in *R (O'Connor) v Aldershot Magistrates' Court* [2017] 1 WLR 2833 "The right to attend a public court hearing and to enter the court building for that purpose is not unqualified." The court has an inherent power to restrict public access to the courtroom where it is necessary to do so in the interests of justice, for example to prevent disorder.

6E.3 During criminal proceedings in a Crown Court there are some specific parts of proceedings whereby it may be appropriate for a judge to restrict movement in the public gallery. As observed by Bean LJ in *R (on the application of Ewing) v Isleworth Crown Court* [2019] EWHC 288 (Admin) this is to ensure that during "these sensitive moments, generally of brief duration, it is necessary for the court to be still so that the process can take place without distraction and in a manner which preserves the dignity and solemnity of the proceedings". It is expected that during the following parts of the proceedings, access may be restricted to prevent comings and goings in the public gallery:

I. Arraignment;
II. Empanelling and swearing in of the jury;
III. Oath taking or affirmation;
IV. Return of verdict by a jury;

V. Passing of sentence by a Judge.

6E.4 In the *Ewing* judgment the Administrative Court made clear that it would be unlawful to issue a blanket policy that restricted access during other parts of the proceedings. Unless the judge has specifically directed restrictions to access to the public gallery for good reason in a particular case, then at all other times, it is expected that the public can enter and leave the courtroom as they require, provided they do so quietly and without disrupting proceedings.

CPD I Annex:
GUIDANCE ON ESTABLISHING AND USING LIVE LINK AND TELEPHONE FACILITIES FOR CRIMINAL COURT HEARINGS

1. This guidance supplements paragraph I 3N of these Practice Directions on the use of live link and telephone facilities to conduct a hearing or receive evidence in a criminal court.

2. This guidance deals with many of the practical considerations that arise in connection with setting up and using live link and telephone facilities. However, it does not contain detailed instructions about how to use particular live link or telephone equipment at particular locations (how to turn the equipment on; how, and exactly when, to establish a connection between the courtroom and the other location; etc.) because details vary from place to place and cannot practicably all be contained in general guidance. Those details will be made available locally to those who need them. Nor does this guidance contain detailed instructions about the individual responsibilities of court staff, police officers and prison staff because those are matters for court managers, Chief Constables and HM Prison Governors.

Installation of live link and telephone facilities in the courtroom
3. Everyone in the courtroom must be able to hear and, in the case of a live link, see clearly those who attend by live link or telephone; and the equipment in the courtroom must allow those who attend by live link or telephone to hear, and in the case of a live link see, all the participants in the courtroom. If more than one person is to attend by live link or telephone simultaneously then the equipment must be capable of accommodating them all. (These requirements of course are subject to any special or other measures which a court in an individual case may direct to prevent a witness seeing, or being seen by, the defendant or another participant, or members of the public.)

4. Some of the considerations that apply to the installation and use of equipment in other locations will apply in a courtroom, too. They are set out in the following paragraphs. In the case of a live link, attention will need to be given to lighting and to making sure that those attending by live link can see and hear clearly what takes place in the courtroom without being distracted by the movement of court staff, legal representatives or members of the public, or by noise inside the courtroom. The sensitivity and positioning of the courtroom microphones may

mean that even the movement of papers, or the operation of keyboards, while barely audible inside the courtroom itself, is clearly audible and distracting to a witness or defendant attending by live link or telephone.

Installation and use of live link and telephone facilities in a live link room
5. Paragraph 6 applies to the installation and use of equipment in a building or in a vehicle which is to be used regularly for giving evidence by live link. It applies to a room within the court building, but separated from the courtroom itself, from which a witness can give evidence by live link; it applies to such a room at a police station or elsewhere which has been set aside for regular use for such a purpose; and it applies to a van or other vehicle which has been adapted for use as a mobile live link room. However, that paragraph does not apply to the courtroom itself; it does not apply to a place from which a witness gives evidence, or a participant takes part in the proceedings, by live link or telephone, if that place is not regularly used for such a purpose (but see paragraph 7 beneath); and it does not apply in a prison or other place of detention (as to which, see paragraph 12 beneath). The objective is to ensure that anyone who participates by live link or telephone is conscious of the gravity of the occasion and of the authority of the court, and realises that they are required to conduct themselves in the same respectful manner as if they were physically present in a courtroom.

6. A live link room should have the following features:
(a) the room should be an appropriate size, neither too small nor too large.
(b) the room should have suitable lighting, whether natural or electric. Any windows may need blinds or curtains fitted that can be adjusted in accordance with the weather conditions outside and to ensure privacy.
(c) there should be a sign or other means of making clear to those outside the room when the room is in use.
(d) arrangements should be made to ensure that nobody in the vicinity of the room is able to hear the evidence being given inside, unless the court otherwise directs (for example, to allow a witness' family to watch the witness' evidence on a supplementary screen in a nearby waiting room, as if they were seeing and hearing that evidence by live link in the courtroom).
(e) arrangements should be made to minimise the risk of disruption to the proceedings by noise outside the room. Such noise will distract the witness and may be audible and distracting to the court.
(f) the room should be provided with appropriate and comfortable seating for the witness and, where the witness is a civilian witness, seating for a Witness Service or other companion. A waiting area/room adjacent to the live link room may be required for any other persons attending with the witness. There must be adequate accommodation, support and, where appropriate, security within the premises for witnesses. If both prosecution and defence witnesses attend the same facility, they should wait in separate rooms. It may be inappropriate for defence witnesses to give evidence in police premises (for example in a trial for assaulting a police officer) and in that case parties and the court should identify an alternative venue such as a court building (not necessarily the location of

the hearing), or arrange for evidence to be given from elsewhere by Skype, etc. Care must be taken to ensure that all witnesses, whether prosecution or defence, are afforded the same assistance, respect and security.

(g) the equipment installed (monitor, microphone and camera, or cameras) in the room must be good enough to ensure that both the picture and sound quality from the room to the court, and from the court to the room, is fit for purpose. The link must enable all in the courtroom to see and hear the witness clearly and it must enable the witness to see and hear clearly all participants in the courtroom.

(h) unless the court otherwise directs, the witness usually will sit to take the oath or affirm and to give evidence. The camera(s) must be positioned to ensure that the witness' face and demeanour can be seen whether he or she sits or stands.

(i) the wall behind the witness, and thus in view of the camera, should be a pale neutral colour (beige and light green/blue are most suitable) and there should be no pictures or notices displayed on that wall.

(j) the Royal coat of arms may be displayed to remind witnesses and others that when in use the room is part of the courtroom.

(k) a notice should be displayed that reminds users of the live link to conduct themselves in the same manner as if they were present in person in the courtroom, and to remind them that while using the live link they are subject to the court's jurisdiction to regulate behaviour in the courtroom.

(l) the room should be supplied with the same oath and affirmation cards and Holy books as are available in a courtroom. The guidance for the taking of oaths and the making of affirmations which applies in a courtroom applies equally in a live link room. Holy books must be treated with the utmost respect and stored with appropriate care.

(m) unless court or other staff are on hand to operate the live link or telephone equipment, clear instructions for users must be in the live link room explaining how, and when, to establish a connection to the courtroom.

Provision and use of live link and telephone facilities elsewhere

7. Where a witness gives evidence by live link, or a participant takes part in proceedings by live link or telephone, otherwise than from an established live link room, the objective remains the same as explained in paragraph 5 above. In accordance with that objective, the spirit of the requirements for a live link room should be followed as far as is reasonably practicable; but of course the court will not expect adherence to the letter of those requirements where, for example, a witness who is seriously ill but still able to testify is willing to do so from his or her sick bed, or a doctor or other expert witness is to testify by live link from her or his office. In any such case it is essential that the parties anticipate the arrangements and directions that may be required. Of particular and obvious importance is the need for arrangements that will exclude audible and visible interruptions during the proceedings, and the need for adequate clarity of communication between the remote location and the courtroom.

Conduct of hearings by live link or telephone

8. Before live link or telephone equipment is to be used to conduct a hearing, court staff must make sure that the equipment is in working order and that the essential criteria listed in paragraph I 3N.4 of the Practice Directions ('appropriate' facilities) are met.

9. If a witness who gives evidence by live link produces exhibits, the court must be asked to give appropriate directions during preparation for trial. In most cases the parties can be expected to agree the identity of the exhibit, whatever else is in dispute. In the absence of agreement, documentary exhibits, copies of which have been provided under CrimPR 24.13 (magistrates' court trial) or CrimPR 25.17 (Crown Court trial), and other exhibits which are clearly identifiable by reference to their features and which have been delivered by someone else to the court, may be capable of production by a witness who is using a live link.

10. Where a witness who gives evidence by live link is likely to be referred to exhibits or other material while he or she does so, whether or not as the producer of an exhibit, the court must be asked to give directions during preparation for trial to facilitate such a reference: for example, by requiring the preparation of a paginated and indexed trial bundle which will be readily accessible to the witness, on paper or in electronic form, as well as available to those who are in the courtroom. It is particularly important to make sure that documents and images which are to be displayed by electronic means in the courtroom will be accessible to the witness too. It is unlikely that the live link equipment will be capable of displaying sufficiently clearly to the witness images displayed only on a screen in the courtroom; and likely to be necessary to arrange for those images to be displayed also at the location from which the witness gives evidence, or made available to him or her by some other means. It is likewise important that there should be readily accessible to the witness, on paper or in electronic form, a copy of his or her witness statement (to which she or he may be referred under CrimPR 24.4(5), in a magistrates' court, or under CrimPR 25.11(5), in the Crown Court) and transcript of his or her ABE interview, if applicable.

Conduct of those attending by live link or telephone: practical considerations

11. A person who gives evidence by live link, or who participates by live link or telephone, must behave exactly as if he or she were in the courtroom, addressing the court and the other participants in the proper manner and observing the appropriate social conventions, remembering that she or he will be heard, and if using a live link seen, as if physically present. A practical application of the rules and social conventions governing a participant's behaviour requires, among other things, the following:

(1) in the case of a professional participant, including a police officer, lawyer or expert witness:
   (a) a participant should prepare themselves to communicate with the court with adequate time in hand, and especially where it will be necessary first to establish the live link or telephone connection with the court.

(b) on entering a live link room a participant should ensure that those outside are made aware that the room is in use, to avoid being interrupted while in communication with the court.

(c) a participant should ensure that they have the means to communicate with court staff by some means other than the proposed live link or telephone equipment, in case the equipment they plan to use should fail. They should have to hand an alternative contact number for the court and, if using a mobile phone for the purpose, they should ensure that it is fully charged.

(d) immediately before using the live link or telephone equipment to communicate with the court the person using that equipment and any other person in the live link room must as a general rule switch off any mobile telephone or other device which might interfere with that equipment or interrupt the proceedings. If the device is essential to giving evidence (for example, an electronic notebook), or if it is the only available means of communication with court staff should the other equipment fail, then every effort must be made to minimise the risk of interference, for example by switching a mobile telephone to silent and by placing electronic devices at a distance from the microphone.

(e) a person who gives evidence by live link, or who takes part in the proceedings for some other purpose by live link, must dress as they would if attending by physical presence in the courtroom.

(f) each person in a live link room, whether he or she can be seen by the court or not, and each person present where a telephone conference or loudspeaker facility is in use, must identify themselves clearly to the court.

(g) a person who participates by telephone otherwise than from a room specially equipped for that purpose must take care to ensure that they cannot be interrupted while in communication with the court and that no extraneous noise will be audible so as to distract that participant or the court.

(h) a person who participates by telephone in a call to which he or she, the court and others all contribute must take care to speak clearly and to avoid interrupting in such a way as to prevent any other participant hearing what is said. Particular care is required where a participant uses a hands-free or other loudspeaker phone.

(i) a witness who gives evidence by live link may take with him or her into the live link room a copy of her or his written witness statement and (if a police officer) his or her notebook. While giving evidence the witness must place the statement or notes face down, or otherwise out of sight, unless the court gives permission to refer to it. The witness must take the statement or notes away when leaving the live link room.

(j) where successive witnesses are due to give evidence about the same events by live link, and especially where they are due to do so from the same live link room; where the events in question are controversial; or where there is any suggestion that arrangements are required to guard against the accidental or deliberate contamination of a witness' evidence by communication with one who has already given evidence,

then the court must be asked to give directions accordingly. Subject to those directions, the usual arrangement should be that a witness who has been released should remain in sight of the court, by means of the live link, in the live link room while the next witness enters, and then should leave: so that the court will be able to see that no inappropriate communication between the two has occurred.

(2) in the case of any other participant:

(a) the preparation of any live link room and the use of the equipment will be the responsibility of court staff, or of the staff present at that live link room if it is outside the court building. Where the participant is a witness giving evidence pursuant to a special measures direction, detailed arrangements will have been made accordingly.

(b) mobile telephones and other devices that might interfere with the live link or telephone equipment must be switched off.

(c) a witness or other participant should take care to speak clearly and to avoid interrupting or making a sound which prevents another participant hearing what is said, especially where a hands-free or other loudspeaker phone is in use.

(d) the party who calls a witness, or the witness supporter, or court or other staff, as the case may be, must supply the witness with all he or she may need for the purpose of giving evidence, in accordance with the relevant rules and Practice Directions. This may, and usually will, include a copy of the witness' statement, in case it becomes necessary to ask him or her to refer to it, and copies of any exhibits or other material to which he or she may be asked to refer: see also paragraph 10 above.

Prison to court video links

12. The objective of the guidance in the preceding paragraphs applies. It is essential that the authority and gravity of the proceedings is respected, by defendants and by their custodians. Detailed instructions are contained in the information issued jointly by the National Offender Management Service and by HM Courts and Tribunals Service, with which prison and court staff must familiarise themselves. The principles set out in that guidance correspond with those of the Criminal Practice Directions, as elaborated in this guidance.

13. Where a defendant in custody attends court by live link it is likely that he or she will need to communicate with his or her representatives before and after the hearing, using the live link or by telephone. Arrangements will be required to allow that to take place.

14. Court staff are reminded that a live link to a prison establishment is a means of communication with the defendant. It does not provide an alternative means of formal communication with that establishment and it may not be used in substitution for service on that establishment of those notices and orders required to be served by the Criminal Procedure Rules.