CRIMINAL PRACTICE DIRECTIONS

Table of Content

			bail pending appeal
CPD	IV Disclosure	22A	Disclosure of unused material
CPD	V Evidence	27A	Evidence by written statement
CPD	V Evidence	27B	Video recorded evidence in chief
CPD	V Evidence	27C	Evidence of audio and video recorded interveiws
CPD	V Evidence	28A	Wards of Court and children subject to current Family proceedings
CPD	V Evidence	29A	Measures to assist a witness or defendant to give evidence
CPD	V Evidence	29B	Witnesses giving evidence by live link
CPD	V Evidence	29C	Visually recorded interviews: memory refreshing and watching at a different time from the jury
CPD	V Evidence	29D	Witness anonymity orders
CPD	V Evidence	35A	Spent convictions
CPD	VI Trial	37A	Role of the justices' clerk/legal adviser
CPD	VI Trial	39A	Juries: introduction
CPD	VI Trial	39B	Juries: preliminary matters arising before jury service commences
CPD	VI Trial	39C	Juries: eligibility
CPD	VI Trial	39D	Juries: precautionary measures before swearing
CPD	VI Trial	39E	Juries: swearing in jurors
CPD	VI Trial	39F	Juries: ensuring an effective jury panel
CPD	VI Trial	39G	Juries: preliminary instructions to jurors
CPD	VI Trial	39H	Juries: discharge of a juror for personal reasons
CPD	VI Trial	39J	Juries: views
CPD	VI Trial	39K	Juries: directions to jury before retirement
CPD	VI Trial	39L	Juries: jury access to exhibits and evidence in retirement
CPD	VI Trial	39M	Jury Irregularities
CPD	VI Trial	39N	Open justice
CPD	VI Trial	39P	Defendant's right to give or not to give evidence
CPD	VI Trial	39Q	Majority verdicts
CPD	VII Sentencing	A	Pleas of guilty in the Crown Court
CPD	VII Sentencing	B	Determining the factual basis of sentence
CPD	VII Sentencing	C	Indications of sentence: *R v Goodyear*
CPD	VII Sentencing	D	Facts to be stated on pleas of guilty
CPD	VII Sentencing	E	Concurrent and consecutive sentences
CPD	VII Sentencing	F	Victim Personal Statements
CPD	VII Sentencing	G	Families bereaved by homicide and other criminal conduct
CPD	VII Sentencing	H	Community Impact Statements
CPD	VII Sentencing	I	
CPD	VII Sentencing	J	Binding over orders and conditional discharges
CPD	VII Sentencing	K	Committal for sentence
CPD	VII Sentencing	L	Imposition of life sentences
CPD	VII Sentencing	M	Mandatory life sentences
CPD	VII Sentencing	N	Transitional arrangements for sentences where the offence was committed before 18 December 2003
CPD	VII Sentencing	P	Procedure for announcing the minimum term in

			open court
CPD	IX Contempt of court	62A	Contempt in the face of the magistrates' court
CPD	X Appeal	63A	Appeals to the Crown Court
CPD	X Appeal	68A	Appeals against conviction and sentence – the provision of notice to the prosecution
CPD	X Appeal	68B	Listing of appeals against conviction and sentence in the Court of Appeal Criminal Division (CACD)
CPD	X Appeal	68C	Appeal notices containing grounds of appeal
CPD	X Appeal	68D	Respondents' notices
CPD	X Appeal	68E	Loss of time
CPD	X Appeal	68F	Skeleton arguments
CPD	X Appeal	68G	Criminal Appeal Office summaries
CPD	X Appeal	75A	References to the European Court of Justice
CPD	XI Costs		
CPD	XII General application	A	Court dress
CPD	XII General application	B	Modes of address and titles of judges and magistrates
CPD	XII General application	C	Availability of judgments given in the Court of Appeal and the High Court
CPD	XII General application	D	Citation of authority and provision of copies of judgments to the Court
CPD	XII General application	E	Preparation of judgments: neutral citation
CPD	XII General application	F	Citation of Hansard

I General matters

CPD I General matters A

A.1 The Lord Chief Justice has power, including power under section 74 of the Courts Act 2003 and Part 1 of Schedule 2 of the Constitutional Reform Act 2005, to make directions as to the practice and procedure of the criminal courts. The following directions are made accordingly.

A.2 These Practice Directions replace the Consolidated Criminal Practice Direction of 8 July 2002 ([2002] 1 W.L.R. 2870; [2002] 2 Cr. App. R. 35), as amended, which is hereby revoked, with the exception of sections III.21, IV.31, IV.32, IV.33, IV.38 and IV.41.9. The Practice Directions, Practice Notes and Practice Statements listed in Annex A and Annex B of the 2002 consolidation, with the exception of Practice Direction: (Supreme Court) (Devolution Issues) [1999] 1 WLR 1592; [1999] 3 All ER 466; [1999] 2 Cr App R 486, are also revoked. Annexes D, E and F remain in force.

A.3 These Practice Directions, which shall be known as the Criminal Practice Directions, take effect from the 7th October 2013. They apply to all cases in all the criminal courts of England and Wales from that date.

Part 1 The overriding objective

CPD I General matters 1A

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 Direction, taken together, make it clear that courts must not allow it to happen.

Part 2 Understanding and applying the Rules

Part 3 Case management

CPD I General matters 3A: CASE MANAGEMENT

3A.1 To avoid unnecessary and wasted hearings, the parties should be allowed adequate time to prepare, having regard to the time limits for applications and notices set by the Criminal Procedure Rules and by other legislation. When those time limits have expired, the parties will be expected to be fully prepared.

3A.2 The required forms and guidance notes can all be found in Annex D. PDF and Word versions are available on the Criminal Procedure Rules pages of the Ministry of Justice website. The forms to be used in magistrates' courts contain directions some of which are determined by Criminal Procedure Rules or other legislation and some of which are discretionary, as explained in the guidance notes. All those directions apply in every case unless the court otherwise orders.

Cases to be tried in a magistrates' court or a youth court

3A.3 The trial preparation form authorised for use must be used. The form, read with the notes, constitutes a timetable for the effective preparation of a case and provides a list of all the matters that the court should consider in giving directions for trial.

Cases sent for trial in the Crown Court

3A.4 The magistrates' court that sends a case for trial should remind the parties of the time limits set by the Criminal Procedure Rules and other legislation

applicable, in the standard form produced for the court by Her Majesty's Courts and Tribunals Service.

3A.5 In the magistrates' court's discretion, having consulted the Crown Court, it may give other directions for the preparation of the case: see rule 3.5(3) of the Criminal Procedure Rules. In particular, the magistrates' court may give directions for the case to be listed in the Crown Court for an early guilty plea hearing, a preliminary hearing or a plea and case management hearing, as appropriate.

Early guilty plea hearing

3A.6 The magistrates' court or the Crown Court may order an early guilty plea hearing, in accordance with directions given by the presiding judges, where a guilty plea is anticipated, to allow the Crown Court promptly to deal with such a case.

3A.7 Sentence should normally be passed at an early guilty plea hearing. The parties must prepare accordingly in advance of the hearing. This may include:

i) addressing any issue arising from a basis of plea,
ii) making timely application for a pre-sentence report and, if granted, ensuring that the Probation Service is provided with details of the offence(s) in respect of which the defendant intends to plead guilty, the details of any basis of plea(s) and of the defendant's current address and telephone number(s),
iii) obtaining medical or other material necessary for sentencing, and
iv) quantifying costs.

3A.8 The court must be notified promptly of any difficulty which may mean that sentence cannot be passed at the hearing so that an alternative date can be considered.

Preliminary hearings for cases sent for trial

3A.9 If no early guilty plea hearing is ordered, the magistrates' court or the Crown Court should order a preliminary hearing where:

(a) there are case management issues which call for such a hearing;

(b) the trial is likely to last for more than 4 weeks;

(c) it would be desirable to set an early trial date; or

(d) the defendant is a child or young person.

If there is to be a preliminary hearing, it is preferable for this to be held between 14 and 21 days after the case is sent for trial.

Plea and case management hearings ('PCMH')

3A.10 Where the magistrates' court does not order an early guilty plea hearing or a preliminary hearing, it should order a plea and case management hearing to be held within about:

(a) 13 weeks after sending for trial, where a defendant is in custody; or

(b) 16 weeks after sending for trial, where a defendant is on bail.

3A.11 Those periods accommodate the periods fixed by the relevant rules and other legislation for the service of:

(a) the prosecution case papers (see rule 9.15 of the Criminal Procedure Rules, and the regulations to which that rule refers);

(b) prosecution initial disclosure (see rule 22.2 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(c) the indictment (see rule 14.1 of the Criminal Procedure Rules);

(d) the defence statement and witness notice (see rule 22.4 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(e) any defence application to dismiss the charges (see rule 9.16 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(f) any defence application for prosecution disclosure (see rule 22.5 of the Criminal Procedure Rules, and the legislation to which that rule refers);

(g) any defence application under Part 36 of the Criminal Procedure Rules (evidence of a complainant's previous sexual behaviour); and

(h) the prosecution response to any such application.

3A.12 Where the parties realistically expect to have completed these preparatory steps in less time than that then the magistrates' court should order the PCMH to be held earlier. But it will not normally be appropriate to order that the PCMH be held on a date before the expiry of at least 4 weeks from the date on which the prosecutor expects to serve the prosecution case papers, to allow the defence a proper opportunity to consider them and give a defence statement. To order that a PCMH be held before the parties have had a reasonable opportunity to complete their preparation in accordance with the Criminal Procedure Rules risks compromising the effectiveness of this most important pre-trial hearing and risks wasting their time and that of the court.

3A.13 Active case management at the PCMH is essential, to reduce the number of ineffective, cracked and vacated trials and delays during the trial to resolve legal issues. The effectiveness of a PCMH hearing in a contested case depends in large measure upon preparation by all concerned and upon the presence of the trial advocate, or an advocate who is able to make decisions and give the court the assistance which the trial advocate could be expected to give. Resident Judges, in setting the listing policy, should ensure that list officers fix cases as far as possible to enable the trial advocate to conduct the PCMH and the trial.

3A.14 The PCMH form authorised for use provides a list of all the matters that the court should consider in giving directions for trial.

3A.15 Additional pre-trial hearings should be held only if needed for some compelling reason. Such hearings – often described informally as 'mentions' – are expensive and should actively be discouraged. Where necessary the power to give, vary or revoke a direction without a hearing should be used. Rule 3.9(3) of the Criminal Procedure Rules enables the court to require the parties' case

progression officers to inform the Crown Court case progression officer that the case is ready for trial, that it will proceed as a trial on the date fixed and will take no more or less time than that previously ordered.

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 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 (Rule 3.8(4)(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 (Rule 3.2(2)(b)) and may require the parties to identify arrangements to facilitate the giving of evidence and participation in the trial (Rule 3.10(c)(iv) and (v)). There are various statutory special measures that the court may utilise to assist a witness in giving evidence. Part 29 of the Rules 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 (rule 29.9).

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

3F.1 Intermediaries are communication specialists (not supporters or expert witnesses) whose role is to facilitate communication between the witness and the court, including the advocates. Intermediaries are independent of the parties and owe their duty to the court (see Registered Intermediaries Procedural Guidance Manual, Ministry of Justice, 2012): http://www.cps.gov.uk/publications/docs/RI_ProceduralGuidanceManual_2012.pdf

3F.2 Intermediaries for witnesses, with the exception of defendants, are one of the special measures available under the Youth Justice and Criminal Evidence Act 1999 and Part 29 of the Criminal Procedure Rules.

3F.3 There is currently no statutory provision in force for intermediaries for defendants. Section 104 of the Coroners and Justice Act 2009 (not yet implemented) creates a new section 33BA of the Youth Justice and Criminal Evidence Act 1999. This will provide an intermediary to an eligible defendant only while giving evidence. A court may use its inherent powers to appoint an intermediary to assist the defendant's communication at trial (either solely when giving evidence or throughout the trial) and, where necessary, in preparation for trial: *R (AS) v Great Yarmouth Youth Court* [2011] EWHC 2059 (Admin), [2012] Crim L.R. 478; *R v H* [2003] EWCA Crim 1208, Times, April 15, 2003; *R (C) v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin), [2010] 1 All E.R. 735; *R (D) v Camberwell Green Youth Court*, [2005] UKHL 4, [2005] 1 W.L.R. 393, [2005] 2 Cr. App. R. 1; *R (TP) v West London Youth Court* [2005] EWHC 2583 (Admin), [2006] 1 W.L.R. 1219, [2006] 1 Cr. App. R. 25.

3F.4 Ministry of Justice regulation only applies to Registered Intermediaries appointed for prosecution and defence witnesses through its Witness Intermediary Scheme. All defendant intermediaries – professionally qualified or otherwise – are 'non-registered' in this context, even though they may be a Registered Intermediary in respect of witnesses. Even where a judge concludes he has a common law power to direct the provision of an intermediary, the direction will be ineffective if no intermediary can be identified for whom funding would be available.

3F.5 Assessment should be considered if a child or young person under 18 seems unlikely to be able to recognise a problematic question or, even if able to do so, may be reluctant to say so to a questioner in a position of authority. Studies suggest that the majority of young witnesses, across all age groups, fall into one or other of these categories. For children aged 11 years and under in particular, there should be a presumption that an intermediary assessment is appropriate. Once the child's individual requirements are known and discussed at the ground rules hearing, the intermediary may agree that his or her presence is not needed for the trial.

3F.6 In the absence of an intermediary for the defendant, trials should not be stayed where an asserted unfairness can be met by the trial judge adapting the trial process with appropriate and necessary caution (*R v Cox* [2012] EWCA Crim 549, [2012] 2 Cr. App. R. 6). This includes setting ground rules for all witness testimony to help the defendant follow proceedings; for example, directing that all witness evidence be adduced by simple questions, with witnesses asked to answer in short sentences; and short periods of evidence, followed by breaks to enable the defendant to relax and for counsel to summarise the evidence for him and to take further instructions.

Photographs of court facilities

3F.7 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 16 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 Section 4 of Part 29 of the Rules 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 rule 37.13.

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

Part 4 Service of documents

Part 5 Forms and court records

CPD I General matters 5A: FORMS

5A.1 The forms at Annex D, or forms to that effect, are to be used in the criminal courts, in accordance with Rule 5.1.

5A.2 The forms at Annex E, the case management forms, must be used in the criminal courts, in accordance with Rule 3.11(1).

5A.3 The table at the beginning of each section 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 recently 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. 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 16 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, unless there are restrictions, such as reporting restrictions, imposed in that particular case. Rule 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 not listed at Rule 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. 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 ACPO, the CPS and the media entitled 'Publicity and the Criminal Justice System':
http://www.cps.gov.uk/publications/agencies/mediaprotocol.html
There is additionally a protocol made under Rule 5.8(5)(b) between the media and HMCTS:
http://www.newspapersoc.org.uk/sites/default/files/Docs/Protocol-for-Sharing-Court-Registers-and-Court-Lists-with-Local-Newspapers_September-2011.doc
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 Rule 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

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 rule 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 Rule 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.
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 Rule 5.5.
Transcript	See Rule 5.5.

Access by reporters

5B.26 Under Part 5 of the Rules, the same procedure applies for 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 Rule 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 II Preliminary proceedings 16B.

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.