CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION XII

GENERAL APPLICATION

Contents of this Division

CPD XII General application A: COURT DRESS

A.1 In magistrates' courts, advocates appear without robes or wigs. In all other courts, Queen's Counsel wear a short wig and a silk (or stuff) gown over a court coat with bands, junior counsel wear a short wig and stuff gown with bands. Solicitors and other advocates authorised under the Courts and Legal Services Act 1990 wear a black solicitor's gown with bands; they may wear short wigs in circumstances where they would be worn by Queen's Counsel or junior counsel.

A.2 High Court Judges hearing criminal cases may wear the winter criminal robe year-round. However, scarlet summer robes may be worn.

CPD XII General application B: MODES OF ADDRESS AND TITLES OF JUDGES AND MAGISTRATES

Modes of Address

B.1 The following judges, when sitting in court, should be addressed as 'My Lord' or 'My Lady', as the case may be, whatever their personal status:

(a) Judges of the Court of Appeal and of the High Court;
(b) any Circuit Judge sitting as a judge of the Court of Appeal (Criminal Division) or the High Court under section 9(1) of the Senior Courts Act 1981;
(c) any judge sitting at the Central Criminal Court;
(d) any Senior Circuit Judge who is an Honorary Recorder.

B.2 Subject to the paragraph above, Circuit Judges, qualifying judge advocates, Recorders and Deputy Circuit Judges should be addressed as 'Your Honour' when sitting in court.

District Judges (Magistrates' Courts) should be addressed as "Sir [or Madam]" or "Judge" when sitting in Court.

Magistrates in court should be addressed through the Chairperson as "Sir[or Madam]" or collectively as "Your Worships".

Description

B.3 In cause lists, forms and orders members of the judiciary should be described as follows:

(a) Circuit Judges, as 'His [or Her] Honour Judge A'.

When the judge is sitting as a judge of the High Court under section 9(1) of the Senior Courts Act 1981, the words 'sitting as a judge of the High Court' should be added;

(b) Recorders, as 'Mr [or Mrs, Ms or Miss] Recorder B'.

This style is appropriate irrespective of any honour or title which the recorder might possess, but if in any case it is desired to include an honour or title, the alternative description, 'Sir CD, Recorder' or 'The Lord D, Recorder' may be used;

(c) Deputy Circuit Judges, as 'His [or Her] Honour EF, sitting as a Deputy Circuit Judge'.

(d) qualifying judges advocates, as 'His [or Her] Honour GH, sitting as a qualifying judge advocate.'

(e) District Judges (Magistrates' Courts), as "District Judge (Magistrates' Courts) J"

CPD XII General application C: AVAILABILITY OF JUDGMENTS GIVEN IN THE COURT OF APPEAL AND THE HIGH COURT

C.1 For cases in the High Court, reference should be made to Practice Direction 40E, the supplementary Practice Direction to the Civil Procedure Rules Part 40.

C.2 For cases in the Court of Appeal (Criminal Division), the following provisions apply.

Availability of reserved judgments before handing down, corrections and applications consequential on judgment

C.3 Where judgment is to be reserved the Presiding Judge may, at the conclusion of the hearing, invite the views of the parties' legal representatives as to the arrangements to be made for the handing down of the judgment.

C.4 Unless the court directs otherwise, the following provisions apply where the Presiding Judge is satisfied that the judgment will attract no special degree of confidentiality or sensitivity.

C.5 The court will provide a copy of the draft judgment to the parties' legal representatives about three working days before handing down, or at such other time as the court may direct. Every page of every judgment which is made available in this way will be marked "Unapproved judgment: No permission is granted to copy or use in court." The draft is supplied in confidence and on the conditions that:

(a) neither the draft judgment nor its substance will be disclosed to any other person or used in the public domain; and

(b) no action will be taken (other than internally) in response to the draft judgment, before the judgment is handed down.

C.6 Unless the parties' legal representatives are told otherwise when the draft judgment is circulated, any proposed corrections to the draft judgment should be sent to the clerk of the judge who prepared the draft (or to the associate, if the judge has no clerk) with a copy to any other party's legal representatives, by 12 noon on the day before judgment is handed down.

C.7 If, having considered the draft judgment, the prosecution will be applying to the Court for a retrial or either party wishes to make any other application consequent on the judgment, the judge's clerk should be informed with a time estimate for the application by 12 noon on the day before judgment is handed down. This will enable the court to make appropriate listing arrangements and notify advocates to attend if the court so requires. There is no fee payable to advocates who attend the hand down hearing if not required to do so by the court. If either party is considering applying to the Court to certify a point for appeal to the Supreme Court, it would assist if the judge's clerk could be informed at the same time, although this is not obligatory as under section 34 of the Criminal Appeal Act 1968, the time limit for such applications is 28 days.

Communication to the parties including the defendant or the victim

C.8 The contents are not to be communicated to the parties, including to the defendant, respondent or the victim (defined as a person entitled to receive services under the Code of Practice for Victims of Crime)

until two hours before the listed time for pronouncement of judgment.

C.9 Judges may permit more information about the result of a case to be communicated on a confidential basis to the parties including to the defendant, respondent or the victim at an earlier stage if good reason is shown for making such a direction.

C.10 If, for any reason, the parties' legal representatives have special grounds for seeking a relaxation of the usual condition restricting disclosure to the parties, a request for relaxation of the condition may be made informally through the judge's clerk (or through the associate, if the judge has no clerk).

C.11 If the parties or their legal representatives are in any doubt about the persons to whom copies of the draft judgment may be distributed they should enquire of the judge or Presiding Judge.

C.12 Any breach of the obligations or restrictions in this section or failure to take reasonable steps to ensure compliance may be treated as contempt of court.

Restrictions on disclosure or reporting

C.13 Anyone who is supplied with a copy of the handed-down judgment, or who reads it in court, will be bound by any direction which the court may have given in a child case under section 39 of the Children and Young Persons Act 1933 or section 45 or 45A of the Youth Justice and Criminal Evidence Act 1999, or any other form of restriction on disclosure, or reporting, of information in the judgment.

C.14 Copies of the approved judgment can be ordered from the official shorthand writers, on payment of the appropriate fee. Judgments identified as of legal or public interest will generally be made available on the website managed by BAILLI: http://www.bailii.org/

CPD XII General Application D: CITATION OF AUTHORITY AND PROVISION OF COPIES OF JUDGMENTS TO THE COURT AND SKELETON ARGUMENTS

D.1 This Practice Direction applies to all criminal matters before the Court of Appeal (Criminal Division), the Crown Court and the magistrates' courts. In relation to those matters only, Practice Direction (Citation of Authorities) [2012] 1 WLR 780 is hereby revoked.

CITATION OF AUTHORITY

D.2 In *R v Erskine; R v Williams* [2009] EWCA Crim 1425, [2010] 1 W.L.R. 183, (2009) 2 Cr. App. R. 29 the Lord Chief Justice stated:

> 75. The essential starting point, relevant to any appeal against conviction or sentence, is that, adapting the well known aphorism of Viscount Falkland in 1641: if it is not *necessary* to refer to a previous decision of the court, it is *necessary* not to refer to it. Similarly, if it is not *necessary* to include a previous decision in the bundle of authorities, it is *necessary* to exclude it. That approach will be rigidly enforced.
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> 76. It follows that when the advocate is considering what authority, if any, to cite for a proposition, only an authority which establishes the principle should be cited. Reference should not be made to authorities which do no more than either (a) illustrate the principle or (b) restate it.
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> 78. Advocates must expect to be required to justify the citation of each authority relied on or included in the bundle. The court is most unlikely to be prepared to look at an authority which does no more than illustrate or restate an established proposition.
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> 80. … In particular, in sentencing appeals, where a definitive Sentencing Guidelines Council guideline is available there will rarely be any advantage in citing an authority reached before the issue of the guideline, and authorities after its issue which do not refer to it will rarely be of assistance. In any event, where the authority does no more than uphold a sentence imposed at the Crown Court, the advocate must be ready to explain how it can assist the court to decide that a sentence is manifestly excessive or wrong in principle.

D.3 Advocates should only cite cases when it is necessary to do so; when the case identifies or represents a principle or the development of a principle. In sentencing appeals, other cases are rarely helpful, providing only an illustration, and this is especially true if there is a sentencing guideline. Unreported cases should only be cited in exceptional circumstances, and the advocate must expect to explain why such a case has been cited.

D.4 Advocates should not assume that because a case cited to the court is not referred to in the judgment the court has not considered it; it is more likely that the court was not assisted by it.

D.5 When an authority is to be cited, whether in written or oral submissions, the advocate should always provide the neutral citation followed by the law report reference.

D.6 The following practice should be followed:

i) Where a judgment is reported in the Official Law Reports (A.C., Q.B., Ch., Fam.) published by the Incorporated Council of Law Reporting for England and Wales or the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing) one of those two series of reports must be cited; either is equally acceptable. However, where a judgment is reported in the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing) that reference must be given in addition to any other reference. Other series of reports and official transcripts of judgment may only be used when a case is not reported, or not yet reported, in the Official Law Reports or the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing).

ii) If a judgment is not reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), but it is reported in an authoritative series of reports which contains a headnote and is made by individuals holding a Senior Courts qualification (for the purposes of section 115 of the Courts and Legal Services Act 1990), that report should be cited.

iii) Where a judgment is not reported in any of the reports referred to above, but is reported in other reports, they may be cited.

iv) Where a judgment has not been reported, reference may be made to the official transcript if that is available, not the handed-down text of the judgment, as this may have been subject to late revision after the text was handed down. Official transcripts may be obtained from, for instance, BAILLI (http://www.bailii.org/).

D.7 In the majority of cases, it is expected that all references will be to the Official Law Reports and the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing); it will be rare for there to be a need to refer to any other reports. An unreported case should not be cited unless it contains a relevant statement of legal principle not found in reported authority, and it is expected that this will only occur in exceptional circumstances.

PROVISION OF COPIES OF JUDGMENTS TO THE COURT

D.8 The paragraphs below specify whether or not copies should be provided to the court. Authorities should not be included for propositions not in dispute. If more than one authority is to be provided, the copies should be presented in paginated and tagged bundles.

D.9 If required, copies of judgments should be provided either by way of a photocopy of the published report or by way of a copy of a reproduction of the judgment in electronic form that has been authorised by the publisher of the relevant series, but in any event-

i) the report must be presented to the court in an easily legible form (a 12-point font is preferred but a 10 or 11-point font is acceptable), and

ii) the advocate presenting the report must be satisfied that it has not been reproduced in a garbled form from the data source.

In any case of doubt the court will rely on the printed text of the report (unless the editor of the report has certified that an electronic version is more accurate because it corrects an error contained in an earlier printed text of the report).

D.10 If such a copy is unavailable, a printed transcript such as from BAILLI may be included.

Provision of copies to the Court of Appeal (Criminal Division)

D.11 Advocates must provide to the Registrar of Criminal Appeals, with their appeal notice, respondent's notice or skeleton argument, a list of authorities upon which they wish to rely in their written or oral submissions. The list of authorities should contain the name of the applicant, appellant or respondent and the Criminal Appeal Office number where known. The list should include reference to the relevant paragraph numbers in each authority. An updated list can be provided if a new authority is issued, or in response to a respondent's notice or skeleton argument. From time to time, the Registrar may issue guidance as to the style or content of lists of authorities, including a suggested format; this guidance should be followed by all parties. The latest guidance is available from the Criminal Appeal Office.

D.12 If the case cited is reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), the law report reference must be given after the neutral citation, and the relevant paragraphs listed, but copies should not be provided to the court.

D.13 If, exceptionally, reference is made to a case that is not reported in the Official Law Reports, the Criminal Appeal Reports or the Criminal Appeal Reports (Sentencing), three copies must be provided to the Registrar with the list of authorities and the relevant appeal notice or respondent's notice (or skeleton argument, if provided). The relevant passages of the authorities should be marked or sidelined.

Provision of copies to the Crown Court and the magistrates' courts

D.14 When the court is considering routine applications, it may be sufficient for the court to be referred to the applicable legislation or to one of the practitioner texts. However, it is the responsibility of the advocate to ensure that the court is provided with the material that it needs properly to consider any matter.

D.15 If it would assist the court to consider any authority, the directions at paragraphs D.2 to D.7 above relating to citation will apply and a list of authorities should be provided.

D.16 Copies should be provided by the party seeking to rely upon the authority in accordance with CrimPR 24.13. This Rule is applicable in the magistrates' courts, and in relation to the provision of authorities, should also be followed in the Crown Court since courts often do not hold library stock (see CrimPR 25.17). Advocates should comply with paragraphs D.8 to D.10 relating to the provision of copies to the court.

Skeleton arguments

D.17 The court may give directions for the preparation of skeleton arguments. Such directions will provide for the time within which skeleton arguments must be served and for the issues which they must address. Such directions may provide for the number of pages, or the number of words, to which a skeleton argument is to be confined. Any such directions displace the following to the extent of any inconsistency. Subject to that, however, a skeleton argument must:

i. not normally exceed 15 pages (excluding front sheets and back sheets) and be concise;
ii. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing;
iii. define the issues;
iv. be set out in numbered paragraphs;
v. be cross-referenced to any relevant document in any bundle prepared for the court;
vi. be self-contained and not incorporate by reference material from previous skeleton arguments;
vii. not include extensive quotations from documents or authorities.

D.18 Where it is necessary to refer to an authority, the skeleton argument must:

i. state the proposition of law the authority demonstrates; and
ii. identify but not quote the parts of the authority that support the proposition.

D.19 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.

D.20 A chronology of relevant events will be necessary in most cases.

D.21 There are directions at paragraphs I 3C.3 and 3C.4 of these Practice Directions that apply to the service of skeleton arguments in support of, and in opposition to, an application to stay an indictment on the grounds of abuse of process; and directions at paragraphs IX 39F.1 to 39F.3 that apply to the service of skeleton arguments in the Court of Appeal. Where a skeleton argument has been prepared in respect of an application for permission to appeal, the same skeleton argument may be relied upon in the appeal upon notice being given to the court, or a replacement skeleton may be served to the timetable set out in those paragraphs.

D.22 At the hearing the court may refuse to hear argument on a point not included in a skeleton argument served within the prescribed time.

D.23 In *R v James, R v Selby* [2016] EWCA Crim 1639; [2017] Crim.L.R. 228 the Court of Appeal observed (at paragraphs 52 to 54):

> "Legal documents of unnecessary and too often of excessive length offer very little assistance to the court. In *Tombstone Ltd v Raja* [2008] EWCA Civ 1441, [2009] 1 WLR 1143 Mummery LJ said:
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> "Practitioners ... are well advised to note the risk of the court's negative reaction to unnecessarily long written submissions. The skeleton argument procedure was introduced to assist the court, as well as the parties, by improving preparations for, and the efficiency of, adversarial oral hearings, which remain central to this court's public role... An unintended and unfortunate side effect of the growth in written advocacy... has been that too many practitioners, at increased cost to their clients and diminishing assistance to the court, burden their opponents and the court with written briefs."
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> He might have penned those remarks had he been sitting in these two cases, and many more, in this Division.
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> In *Standard Bank PLC v Via Mat International* [2013] EWCA Civ 490, [2013] 2 All ER (Comm) 1222 the excessive length of court documents prompted:
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> "It is important that both practitioners and their clients understand that skeleton arguments are not intended to serve as vehicles for extended advocacy and that in general a short, concise skeleton is both more helpful to the court and more likely to be persuasive than a longer document

which seeks to develop every point which the advocate would wish to make in oral argument."
No area of law is exempt from the requirement to produce careful and concise documents: *Tchenquiz v Director of the Serious Fraud Office* [2014] EWCA Civ 1333, [2015] 1 WLR 838, paragraph 10."

CPD XII General application E: PREPARATION OF JUDGMENTS: NEUTRAL CITATION

E.1 Since 11 January 2001 every judgment of the Court of Appeal, and of the Administrative Court, and since 14 January 2002 every judgment of the High Court, has been prepared and issued as approved with single spacing, paragraph numbering (in the margins) and no page numbers. In courts with more than one judge, the paragraph numbering continues sequentially through each judgment and does not start again at the beginning of each judgment. Indented paragraphs are not numbered. A unique reference number is given to each judgment. For judgments of the Court of Appeal, this number is given by the official shorthand writers, Merrill Legal Solutions (Tel: 020 7421 4000 ext.4036). For judgments of the High Court, it is provided by the Courts Recording and Transcription Unit at the Royal Courts of Justice. Such a number will also be furnished, on request to the Courts Recording and Transcription Unit, Royal Courts of Justice, Strand, London WC2A 2LL (Tel: 020 7947 7820), (e-mail: rcj.cratu@hmcts.gsi.gov.uk) for High Court judgments delivered outside London.

E.2 Each Court of Appeal judgment starts with the year, followed by EW (for England and Wales), then CA (for Court of Appeal), followed by Civ or Crim and finally the sequential number. For example, 'Smith v Jones [2001] EWCA Civ 10'.

E.3 In the High Court, represented by HC, the number comes before the divisional abbreviation and, unlike Court of Appeal judgments, the latter is bracketed: (Ch), (Pat), (QB), (Admin), (Comm), (Admlty), (TCC) or (Fam), as appropriate. For example, '[2002] EWHC 123 (Fam)', or '[2002] EWHC 124 (QB)', or '[2002] EWHC 125 (Ch)'.

E.4 This 'neutral citation', as it is called, is the official number attributed to the judgment and must always be used at least once when the judgment is cited in a later judgment. Once the judgment is reported, this neutral citation appears in front of the familiar citation from the law reports series. Thus: 'Smith v Jones [2001] EWCA Civ 10; [2001] QB 124; [2001] 2 All ER 364', etc.

E.5 Paragraph numbers are referred to in square brackets. When citing a paragraph from a High Court judgment, it is unnecessary to

include the descriptive word in brackets: (Admin), (QB), or whatever. When citing a paragraph from a Court of Appeal judgment, however, 'Civ' or 'Crim' is included. If it is desired to cite more than one paragraph of a judgment, each numbered paragraph should be enclosed with a square bracket. Thus paragraph 59 in Green v White [2002] EWHC 124 (QB) would be cited: 'Green v White [2002] EWHC 124 at [59]'; paragraphs 30 – 35 in Smith v Jones would be 'Smith v Jones [2001] EWCA Civ 10 at [30] – [35]'; similarly, where a number of paragraphs are cited: 'Smith v Jones [2001] EWCA Civ 10 at [30], [35] and [40 – 43]'.

E.6 If a judgment is cited more than once in a later judgment, it is helpful if only one abbreviation is used, e.g., 'Smith v Jones' or 'Smith's case', but preferably not both (in the same judgment).

CPD XII General application F: CITATION OF HANSARD

F.1 Where any party intends to refer to the reports of Parliamentary proceedings as reported in the Official Reports of either House of Parliament ("Hansard") in support of any such argument as is permitted by the decisions in *Pepper v Hart* [1993] AC 593 and *Pickstone v Freemans PLC* [1989] AC 66, or otherwise, he must, unless the court otherwise directs, serve upon all other parties and the court copies of any such extract, together with a brief summary of the argument intended to be based upon such extract. No other report of Parliamentary proceedings may be cited.

F.2 Unless the court otherwise directs, service of the extract and summary of the argument shall be effected not less than 5 clear working days before the first day of the hearing, whether or not it has a fixed date. Advocates must keep themselves informed as to the state of the lists where no fixed date has been given. Service on the court shall be effected by sending three copies to the Registrar of Criminal Appeals, Royal Courts of Justice, Strand, London, WC2A 2LL or to the court manager of the relevant Crown Court centre, as appropriate. If any party fails to do so, the court may make such order (relating to costs or otherwise) as is, in all the circumstances, appropriate.