

Liverpool Crown Court



Guidance Note -

in response to the Government's guidelines relating to Coronavirus (COVID-19) and with the authority of the Presiding Judges.

Purpose

The aim of this document is to give guidance to court-users on how we expect to approach the listing of cases at Liverpool Crown Court in the immediate future. Impromptu modifications to this approach may be necessary depending on the requirements of individual cases. This guidance will be kept under constant review as the situation develops and in the light of further directions from the Lord Chief Justice.

General matters

- ❖ Although the work of the Crown Court in Liverpool will be severely disrupted during the current crisis, we are endeavouring to ensure that all cases – especially those where a Defendant is in custody – are dealt with expeditiously, fairly and in accordance with the Criminal Procedure Rules.
- ❖ We will continue to recognise and observe the 'open justice' principle. When court hearings are taking place, the court will be open to the public, and the media have a right to attend those hearings and to report those proceedings fully and contemporaneously. It will be for an individual to assess whether their attendance in person at a hearing is in accordance with the Government's advice about necessary activities and social distancing.

- ❖ We expect that for most if not all hearings, the parties will appear remotely by video link. That is the court's default approach so that save in exceptional circumstances only the judge and court staff will be present in the court room. A 'video link' direction is required to permit a party to attend a hearing by video. In the current situation, and subject to any representations in a particular case, judges are likely to be satisfied that it is in the interests of justice to make such a direction in each case where a video link is used. An 'audio link' (e.g. by telephone/Skype call) will not normally be considered an appropriate way of attending a hearing – though this option may be allowed in particular cases at the discretion of the judge concerned (e.g. where the services of an interpreter are required and no video link is available).

Guidance

1. We will not conduct any jury trials until further notice. The reason for this decision is that after carrying out a thorough and detailed assessment at the Q&E Law Courts, we are not satisfied that it is possible to modify any of our courtrooms to accommodate a jury in compliance with the Government's two metre social distancing rule. Because this decision is being kept under constant review, and may be changed at relatively short notice, all parties currently instructed in pending trials should, so far as is reasonably practicable, continue actively to prepare for trial. This includes ensuring regular contact with any witnesses and the effective engagement of Defendants.
2. We will continue to list all other types of hearing, whether the Defendant is in custody or on bail.
3. Until further notice, a Defendant on bail is not required to attend any hearing (in person or remotely by video link) unless a prior specific direction has been

given that attendance is necessary. For the avoidance of doubt, a Defendant on bail will not usually be required to attend a PTPH, or the first listing of a sentence or committal for sentence.

4. Bail applications - These will be dealt with in the usual way, and the advocates can appear in person or remotely by video link.

5. Pre-trial Preparation Hearings (PTPH)

5.1 The advocates must attend (in person or remotely by video link) and be in a position to inform the court whether, so far as was practicable, there has been direct engagement between the parties about the issues in the case as required by CrimPR 3.3.

5.2 It is expected that a Defendant in custody will attend the hearing remotely by the prison video link (PVL). This will be the court's default arrangement for such Defendants. If, for any reason, a Defendant in custody does not attend the hearing, the court will proceed as if the Defendant's attendance was not required.

5.3 Where a Defendant in custody attends the hearing (by PVL or having been produced from custody) it is expected that, as usual, the Defendant will be arraigned.

5.4 If the Defendant in custody pleads 'not guilty', the parties must complete the PTPH form. The normal stage dates will be fixed, and the court will give any other directions required for the effective management of the case. A trial date will not usually be fixed, but instead the case will be listed for a Further Case Management Hearing

(FCMH) where the future progress of the case can be considered (see paragraph 22 below).

- 5.5 If the Defendant in custody pleads 'guilty', the court will consider any basis of plea, whether a trial of issue is required, whether a PSR is required and if so, order its preparation. If a case is ready for sentence, the court will proceed to sentence the Defendant (in person if he has been produced at court, or more usually over the PVL). If for any reason, sentence is adjourned, the court will fix a date on which the Defendant will be sentenced over the PVL.
- 5.6 As indicated above, it is not expected that a Defendant on bail will attend the hearing, though such a Defendant can choose to attend court in person or remotely if suitable arrangements are made by the Defendant's legal representatives for a video link.
- 5.7 Where a Defendant on bail attends the hearing (by video link or in person) it is expected that, as usual, the Defendant will be arraigned.
- 5.8 Where a Defendant on bail does not attend the hearing, the court will nevertheless expect the defence advocate to have sufficient instructions to indicate what the Defendant's plea is likely to be.
- 5.9 If the indication is that a Defendant on bail is likely to plead 'not guilty', (or being in attendance the Defendant on bail pleads 'not guilty') the parties must complete the PTPH form. The normal stage dates will be fixed, and the court will give any other directions required for the effective management of the case. A trial date will not be fixed at this hearing. A trial date will not usually be fixed, but instead the case will

be listed for a FCMH where the future progress of the case can be considered (see paragraph 23 below).

5.10 If the indication is that a Defendant on bail is likely to plead 'guilty' (or being in attendance the Defendant on bail pleads 'guilty'), the court will consider any basis of plea, whether a trial of issue is required, whether a PSR is required and if so order its preparation. If a case is ready for sentence, and the Defendant is present at court, the judge will proceed to sentence the Defendant. If, as expected, the Defendant does not attend the hearing, or for any other reason sentence is adjourned, the court will fix a date for sentence and consider whether it is appropriate to sentence the Defendant remotely by video link, or require the Defendant to attend court in person..

5.11 During the current crisis and until further notice, where a guilty plea is entered or indicated at the PTPH, the sentencing court will be satisfied that there were particular circumstances which made it unreasonable to expect the Defendant to indicate a guilty plea sooner, and a reduction in sentence of one-third will be made. (This indication is, of course, subject to any adverse finding following a Newton Hearing and/or the requirements of any minimum or prescribed sentence provisions.)

6. Bench warrant – i.e. hearings where the Defendant is produced at court following execution of a Crown Court bench warrant. These will be dealt with in the usual way, and the advocates can appear in person or remotely by video link.

7. Sentence/Committal for sentence

- 7.1 Where the Defendant is in custody, these will be dealt with in the usual way, the advocates can appear in person or remotely by video link, and the Defendant will be sentenced over the PVL.
- 7.2 Where the Defendant is on bail, unless a prior specific direction has been given that attendance is necessary, the case will first be listed for a hearing at which the Defendant will not be required to attend. At this hearing the court will fix a date for sentence and will consider: whether there is any issue relating to the basis of plea; whether a PSR is required and if so order its preparation; and whether it is appropriate to sentence the Defendant remotely by video link, or require the Defendant to attend court in person.

8. Application to extend custody time limit (CTL)

- 8.1 Court users are referred to the 'Coronavirus Crisis Protocol for the effective handling of Custody Time Limit cases in the Magistrates' and the Crown Court, between the Senior Presiding Judge (SPJ), HM Courts & Tribunals Service and the Crown Prosecution Service'. A copy of the Protocol is available here:
<https://www.cps.gov.uk/sites/default/files/documents/publications/Coronavirus-Protocol-for-CTL-cases-signed-27032020.pdf>
- 8.2 In particular, we remind the parties that the court may make a decision to extend CTLs at a hearing in public or in private. (CrimPR 14.2(2)). There is no requirement for the parties to attend an unopposed CTL

extension application hearing; such applications can be heard in private in the absence of the parties.

8.3 Accordingly, for the duration of the current crisis the court will, if requested, deal with CTL extension applications when the application is unopposed at a hearing in the absence of the parties and the Defendant. To enable the court to deal with an application in this way:

- the Prosecution must submit any necessary application together with a chronology, and
- the Defendant's legal representatives must notify the court and the Prosecution (including by posting a widely shared comment on the DCS) that the Defendant is aware of his right to make representations and the application is unopposed.

8.4 Applications to extend the CTL which are opposed will be dealt with in the usual way, and the advocates can appear in person or remotely by video link. The Defendant will attend by PVL. The Prosecution must, of course, submit any necessary application to extend the custody time limit together with a chronology.

9. S28 hearings – i.e. pre-trial visual recorded cross-examination or re-examination hearings. Given the logistical and technical difficulties involved in conducting such hearings in the current circumstances, we will not be conducting s28 hearings until further notice.

10. We will list all other hearings (e.g. mention and compliance review hearings) in the usual way. Unless directed otherwise, no Defendant is required to attend these hearings and by default the advocates should appear remotely.
11. We will use our best endeavours to list conviction or sentence appeals where the appellant is in custody. The parties (and in particular the Respondent if the appellant is not represented) must notify the listing officer of the need to give urgent attention to any such appeal. An early review hearing in such cases may be required to consider arrangements for the attendance at the appeal hearing of the parties and any witnesses.
12. No other appeals will be listed until further notice.
13. Although advocates may attend hearings in person or by video link, we recognise the guidance being provided by the Leaders of Circuits and Professional bodies to the effect that advocates should not attend in person unless satisfied that the workplace arrangements at the court building are satisfactory. No advocate should feel under any duty or compulsion to attend a hearing in person. As indicated above, the court's default position in every case will be that the parties will attend remotely. For the purposes of the court record and the payment of fees, the clerk in court will add the name of the advocate attending (whether in person or remotely) to the Xhibit log. There is no need for the advocate to record attendance at the terminal in the robing room.
14. Remote attendance at a hearing will be by the use of the courtroom Justice Video System (JVS) for PVLs and other bridge links, and Skype/Skype for Business. All advocates must ensure that they have the appropriate Skype software to link to the hearing and are familiar with its operation. The Court

will in due course issue a User's Guide for the benefit of participants. [Note: Skype is available as a free app for download to mobile devices (phones and tablets) and such devices can be used to attend the hearing remotely. Indeed, it may be easier to use a mobile device in conjunction with a laptop computer for remote access to enable simultaneous use of DCS, when an extended desktop facility is not available]

15. All those appearing remotely should be appropriately dressed for attendance at court. Legal robes i.e. bands, wigs and gowns are not required. The Judges will appear robed.
16. Each hearing will be given a time marking to enable participants to know when to 'join' remotely, and to facilitate social distancing for anyone attending in person. The court will add a 'widely shared' comment to the particular case on the Digital Case System containing a Skype link to the hearing and a note of the time the case is listed. Copying and pasting this link into a web browser will enable to party to attend the hearing using Skype. This means that any party who has access to the case on DCS will have the ability to attend the hearing and there is no need for any contact information to be supplied to the court. This link can be shared with others, including a Defendant, but we would urge caution and the use of discretion in this regard. In particular, parties should have in mind the matters set out in paragraph 27 below.
17. Any person having a legitimate interest in the proceedings, including the press and any other media agency may apply to the court for a Skype link for a hearing. The request should be made by email to the listing team at: listing.liverpool.crowncourt@justice.gov.uk. The request must identify the name and, where known, the number of the case concerned. A link will ordinarily be granted on request from a representative of the media.

18. If a case is not on DCS (e.g. Probation breach proceedings; non-CPS prosecutions) the court will send to nominated participants a link to join the Skype meeting for their respective hearing. Parties must identify and send to the court the details of all those participants who should be 'invited' to join each hearing. This information must be sent by 12 noon on the day before the hearing, and must include: the name, e-mail address and contact phone number for each proposed attendee.
19. If a party believes that a hearing might require a longer than usual estimate (e.g. to enable a conference with the Defendant utilising the PVL) the listing officer should be informed of this requirement by 12 noon on the day before that hearing.
20. Where any party to a hearing is attending by remote video link all other participants must also 'attend' by Skype – even if physically present in the courtroom. This is to enable all participants to both hear and see everyone else, in compliance with the statutory preconditions for a live link direction. This means that practitioners who attend court in person must have with them a device to enable them also to 'attend' by video link (NB: a phone or tablet with the necessary app is an acceptable device).
21. Any party wishing to make representations regarding the making of a video link direction should email any submissions to the court by 12 noon on the day before the hearing. In the absence of any representations, the court will proceed on the basis that there are no objections and the direction will be given.
22. All custody trials which have been vacated will be allocated a date for a FCMH. The Prosecution must submit any necessary application to extend the custody

time limit together with a chronology. These cases, and any future case where a Defendant in custody pleads 'not guilty' at PTPH, will be listed for a FCMH on a date 7 days after the Stage 2 date. At this hearing, any application to extend the custody time limit will be determined and the court will take the opportunity to review the case generally to ensure continued engagement by the parties. In particular, the court will consider with the parties whether a trial remains necessary or whether the case can be resolved in some other way. All advocates attending a FCMH will be expected to be fully familiar with the detail of the case, and the measures taken and/or in hand to ensure trial readiness. The advocates can attend a FCMH in person or remotely by video link and the Defendant will attend by PVL.

23. All bail trials which have been vacated will be listed for a FCMH on a date to be fixed. At this hearing a new trial date will be fixed, and the court will take the opportunity to review the case generally to ensure continued engagement by the parties. Future cases where a Defendant on bail pleads 'not guilty' at PTPH will also be listed for a FCMH on a date 7 days after the Stage 2 date. The purpose of these hearings is to confirm whether a trial remains necessary or whether the case can be resolved in some other way. All advocates attending a FCMH will be expected to be fully familiar with the detail of the case, and the measures taken and/or in hand to ensure trial readiness. The Defendant's attendance at FCMHs will not be required unless representations are made identifying a need for such attendance. The advocates can attend these hearings in person or remotely by video link.

24. In addition to the FCMHs mentioned above, any party may request that the Court list to mention any case where any party can identify a real benefit in having a hearing – for example to offer no evidence or because a Defendant wishes to change a plea. If this is a hearing where the Defendant is on bail and

would be required to attend then the Defence must notify the court in advance that the Defendant, following advice, has waived his/her right to be present and confirmed that decision in writing (e.g. by e-mail); or the solicitor has made arrangements for the Defendant also to attend the hearing by video link. There will be some hearings which can only be effective if the Defendant is in attendance (in person or by remote video link).

25. Any other applications for hearings will be considered on their merits, (for example, an application by a Defendant to be sentenced when awaiting a co-accused's trial; or an application for a 'Goodyear' indication). These applications should, in the first instance, be submitted in writing.

26. Though operating a reduced service, we understand that the Probation Service can provide pre-sentence reports. Inevitably there will be some delay in these being produced. Interviews with Defendants for the purposes of PSRs will probably be conducted by phone or Skype. Where such a report is ordered by the court, the Defendant will be required to confirm or provide contact details at the hearing.

27. All parties who have access to a video link and/or who attend a hearing by video link (especially legal representatives who are contemplating making any arrangements for lay parties to attend a hearing by video link) should consider carefully the following issues:
 - 25.1 the requirement to ensure full compliance with GDP regulations and the protection of personal information of individuals (e.g. participant's e-mail addresses); and

25.2 the statutory prohibition on recording/broadcasting any court hearing, breach of which amounts to a criminal offence.

HHJ Andrew Menary QC

Resident Judge and Honorary Recorder of Liverpool

6 April 2020