

Kerim Fuad QC, Leader of the South Eastern Circuit

SEC release regarding Split Shift Pilot Scheme

I make it plain that I was not consulted about the Split Shift Scheme which is to be piloted at Blackfriars Crown Court.

The pilot extends to Highbury Corner Magistrates' Court (which commits cases to Blackfriars Crown Court) and Newcastle Crown Court.

The South Eastern Circuit are always happy to consult on any constructive and practical initiative that may improve the workings of the Criminal Justice System. There is so much that needs to be done, at the heart of it of course, funding it properly.

As you should know I have already clearly set out how to make it work in my detailed “How to make the Crown Court work properly” document. At the risk of being immodest I might be expected to be a bit of an expert in this field, as a barrister who has worked daily in nearly all of the criminal courts in the country at all levels for over 25 years, as a Head of Chambers and as Leader of the largest Circuit in the country, having listened to and pooled the increasingly dismayed, frustrated and angry views of thousands of barristers (and many Judges).

We all commend making the system better but suggest speaking and listening to me, the other Circuit Leaders and the Criminal Bar Association to let us happily tell them how. With the best and most honest will in the world, thinking that any person who is not a criminal barrister, knows how to, having never used the crown court, puts them more than just at a disadvantage.

The system will never be more productive unless the government properly pay the busy bees who work so hard to try to keep it

functioning. How can we all defend the rule of law and provide proper access to justice otherwise? Reward those who do the work properly. It saves more money in the long run. Quality advocates doing the work fine-tune the issues. This means shorter trials. This means better justice.

I invite and urge this government and our new Lord Chancellor to be brave. I look forward to meeting him. I will be impressing him to seize this moment in time and invest now in a Criminal Justice System that will serve us all for a decade. Be proud of being the government that made it happen, not the one who saw it finally go down the plughole. Have a proud legacy to beat successive governments with.

Similarly it will never be more productive unless the day-to-day facilities in court for all court users (including Judges) are hugely improved. We need properly functioning canteens, adequate and secure robing rooms, enough conference rooms for those on bail to be seen and for those remanded in custody enough rooms in the cells. For example we need enough plug sockets to plug laptops into and proper cooling facilities in summer.

Any civilised working environment in the western world expects no less. It's not as if we are asking for anything special, just basic human requirements.

If you treat court users properly they will work more productively. They will also respect the building more.

I have been visiting many courts in my regular meetings with Resident Judges. Sadly I have seen some rooms in court buildings in such a poor dilapidated and dirty state that I wouldn't tie a dog in them.

What members of the public (whether jurors or visiting Judges from other jurisdictions) experience and relay when they visit a

court (whether as jurors or not) is critical. In times of Brexit surely this is the time to invest in the independence, quality and advocacy of the Bar (and of course its Judiciary) and have court centres and facilities that reflect this excellence. That combined advert will sell the UK to the world better than anything else, whether hard or softly done.

I can already report that the proposed Split Shift Scheme has met with universal opposition from every barrister (and solicitor) with whom I have spoken. I have of course seen the petition against it. That is a barometer of how people are understandably feeling.

I want to reassure you all that the Bar leaders have been communicating with the judiciary and government to tell them of the many fatal flaws of the current proposed scheme. I am sorry to say that it currently shows **a profound lack of understanding** of how the Crown Court and Magistrates' Courts work in practice.

I list just a few;

It runs contrary to anyone with care responsibilities, whether it be of children or the elderly. Therefore it impacts severely on the diversity that they claim to uphold and promote.

It is wholly impracticable to all sets of Chambers (clerks) and the Crown Prosecution Service whose employees' contracts of employment will not cater for such significant working time adjustments.

One can only imagine and cringe at the huge extra cost of paying court staff (security, clerks and ushers) and the chaos that this will cause.

Chambers and CPS offices will have to open much earlier and close much later to achieve the mechanics of listing. This in turn will interfere with these employees' care responsibilities and work

life balances.

It will disrupt, add anxiety to and lengthen vulnerable (and every) witnesses' evidence.

It will lengthen trials. Accordingly, the period of jury service will have to be extended. It will cause a knock-on effect to subsequent trials waiting to be heard. Custody time limits will be affected.

Employers of jurors will have increased disruption to their businesses due to the punctuated nature of the scheme.

Jurors will be under pressure to go to work for the non-sitting part of the day and will lose focus and concentration on their crucial fact-finding roles due to disrupted trials.

There is a real risk of the contamination of jury papers between cases.

It will increase travel problems.

It will increase the workload on court staff who are already struggling due to staff shortages. Their goodwill which makes the court (barely) function will finally disappear.

For instance, will there be 2 ushers? Or is an usher expected to close the morning court (including ensuring jury papers etc are filed away) and then open up court for the afternoon session, without a lunch break, rest break or indeed lunch (if they can find anywhere close enough to or in a court centre to actually buy lunch)?

What of the increased risks to court staff leaving some courts late in winter time in the dark?

Prison vans will not arrive on time reliably enough, if at all, for advocates to see them in conference beforehand. It is cloud cuckoo land to think that after many years of them regularly being late that they will suddenly be on time, indeed arrive in good time before the hearing so that an advocate can speak to clients. There will not be proper time for any or meaningful conferences at court.

There will be an increase in defendants on remand brought daily to a court centre, meaning that there will be insufficient cells for advocates to meet their clients in. There will then be an increase in waiting times for advocates to see their clients.

At the end of the day those on remand will get back to prisons too late for food and washing. Basic human requirements. This will add further pressure and tensions onto the prison service. Some will return too late to go to prisons so will have to be housed at police stations.

Defendants may spend 9/10 hours at a court (in poor conditions), but their day including travel may extend to a few more hours. Consequently, defendants will be too tired to focus and participate properly in their trials. Their waking day will be over 15 hours.

It will remove the vital period of time that the Bar have to prepare cases for the following day (especially warned list trials). They will not be able, for instance from 4.15pm till 6pm, to telephone solicitors, go to prison or chambers/solicitors' conferences and make arrangements so that the next day's cases can be effective.

This will have a disastrous knock-on effect for the conduct and management of, and preparation for, their other cases.

What of an advocate who finds him/herself in both morning and afternoon sessions? How will they know when they accept a brief?

It will cost the taxpayer a huge amount more. I know that the failed Croydon Crown Court (6 month) scheme in 2011 cost nearly half a million pounds.

What is the budget for this? The existing system is crying out for this money to be spent more wisely on more important issues.

It is critical that there is a **proper evaluation** of the scheme by the judiciary.

If, and it's a big "if", the list office was able to communicate with all the advocates instructed (and Judge) in a case in advance and listen and accommodate their availability (including care issues) then I can potentially see a criminal court sitting at 9.15am (if the van really is at court in good time) to say 12.30pm.

Thereafter the court that afternoon could become an Employment Tribunal almost certainly preventing any advocate being caught in an unworkable double shift.

In due course, subject as ever to your professional code of conduct, it is a matter entirely for each barrister individually whether they wish to participate with it. However having reflected carefully on this I believe that participating in the system will be the best way of exposing the fatal flaws with evidence based examples.

I suppose that I cannot then say; "I told you so", as I wasn't consulted. You will see the inevitable chaos unfold and be evaluated by the Judiciary.

We must have each and every incident of those who suffer through their care responsibilities reported to the Bar Council, Circuits and CBA.

As I have said we will do all we can to work constructively to help

a sensible system work for the benefit of all.

I make plain that the court should not make artificial adjustments as that would paint a false picture and lead to misleading and incorrect performance data.

The problem is that, even if the scheme is tried for a few weeks, along that journey witnesses, jurors and defendants will suffer. They above all should never be the guinea pigs.

Kerim Fuad QC
Leader of the South Eastern Circuit

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