



THE CROWN COURT AT HARROW  
THE CROWN COURT AT ISLEWORTH

## INVITATION TO COMMENT

There follows a DRAFT setting out a new approach to listing to be trialled at Harrow and Isleworth. The objective is nothing short of the ending of warned lists and the success of such a plan depends on the active engagement of all parties. Whilst listing is ultimately a judicial function we set out below our plans and invite comment on any aspects that you consider could be improved and which lie in our power.

You are invited to send comments to [jackie.grant@justice.gov.uk](mailto:jackie.grant@justice.gov.uk) and [Stephen.Stone@justice.gov.uk](mailto:Stephen.Stone@justice.gov.uk) no later than **Friday 7<sup>th</sup> June 2019**

HHJ Rosa Dean and HHJ Martin Edmunds QC

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### DRAFT

## A NEW APPROACH TO TRIAL LISTING

HHJs Rosa Dean and Martin Edmunds QC  
Resident Judges

Draft 15<sup>th</sup> May 2019

### What's happening?

Starting during the summer of 2019 the **Crown Courts at Harrow and Isleworth** will be triallying a new system of trial listing. The plan is to list cases only as Fixtures or Fixed Floaters and that these courts will not operate a warned list

This approach will be trialled for at least 12-18 months so that the benefits can be assessed.

Parallel to this the **Crown Court at Woolwich** will be trialling an alternate system for comparative purposes.

### Why now?

The current levels of receipts and the relatively short time for most cases to be tried mean that we have an opportunity to trial a revised system.

These changes MAY mean that there will be a longer time between sending and trial and there is a risk that the courts will not be used as intensively as a warned list allows. We suspect that this will be balanced by the benefits.

Fixed dates are overwhelmingly to be preferred by witnesses, especially those who have been the victims of crime, and also by defendants.

For advocates and instructing solicitors fixed dates should allow easier management of the workload and the ability to commit to cases with the benefit of better case ownership, and in time to more effective use of court time. Alongside this the court will be better able to allocate cases to individual judges who can provide consistent case progression.

The introduction of pre-recorded cross-examination (s.28) across the London Cluster will require us all to be better able to manage diaries. This new approach is intended to facilitate this to the benefit of all.

If we are wrong and a real trial of such a system ends up delaying trials without substantial benefits, then that may provide evidence that the London Cluster has to have a warned list system.

## **The Harrow and Isleworth Model**

There will be two listings at PTPH. There will be no “warned list”

### **Fixtures:**

- The following will be given fixtures as before:
  - Time estimate of 4 days or more;
  - Sexual offences;
  - Cases with vulnerable witnesses;
  - Cases allocated to an individual judge.
  
- In the following (where not covered above) the judge will consider a fixture
  - Domestic violence;
  - Firearms offences;
  - Disputed expert evidence (this will be scrutinised with care);
  - A significant number of witnesses and a need for timetabling;
  - Instructed advocate(s) have invested time and effort in preparation or a significant investment of time and effort is required to prepare the case efficiently (or where the advocate is required to be on a specialist panel).

### **Fixed Floater:**

- If not given Fixtures the following will be marked “Fixed Floater”. This will be a listing to start on a particular day (which may well not be a Monday). The expectation should be that the trial will start that day but it must be understood that:
  - The court is not giving a guarantee;
  - The list will not necessarily give or show a 10.00 start;

## Catering for cracked or ineffective trials

If a case is going to plead/crack they should do so early and not on the day of trial.

At some level cracked and ineffective trials will remain a fact of life. It follows that the provision of fixed dates will inevitably require “over listing” and the listing teams will be constantly reviewing the appropriate level of overlisting. That may necessarily be done cautiously at first but all involved will understand that there will be occasions when it does not work out.

## Transfers between courts

To provide a measure of flexibility cases listed at Harrow may be moved to Isleworth and vice versa<sup>1</sup> UNLESS good reason has been given in advance. This flexibility will be particularly important where it is necessary to accommodate custody cases within the custody time limits or transfers from other courts and the alternative would be to vacate a bail case from the list.

- Any such transfer will have no less than 24 hours’ notice.
- Cases involving young or vulnerable witnesses or defendants will not be moved near to the trial date and where pre-trial visits have taken place.

## How will this work?

The key to this must be **working together so that so far as can be achieved in an imperfect world:**

- **If a case is going to plead/crack it does so early and not on the day of trial**
- **Case listed for trial are genuine contests and effective on the day;**
- **Trial time estimates are accurate, and cases do not over-run.**

Thus, **the success of the experiment lies principally in the hands of the advocates** who – together with the witnesses and defendants - will be the principal beneficiaries. If cases persistently crack unexpectedly or over-run that may well be taken as an indicator that the “warned list” approach is necessary.

This means:

- Advocates in Fixtures and Fixed Floaters will be expected to commit to the case; to carry out the necessary preparation to timetable; and to be ready to start the case when it is called on.
- Disclosure must be dealt with to timetable and not left to the morning of the trial;
- Where there are changes to the time estimate, or reason to think that a trial fixture will not be effective for whatever reason, the court must be notified.
- The court will review more rigorously the Standard Witness Tables and Certificates of Readiness.

## Time Estimates

The time estimates sought in the PTPH forms aim to include an element for jury deliberation. This is important to ensure that the judge, courtroom and jury are available to conclude the

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<sup>1</sup> And exceptionally elsewhere.

case. However, listing with fixed dates is more concerned with the time the jury will go out and the court able to commence the next case.

We will want to explore how this difference affects listing.

### **More co-operation at PTPH**

- Real engagement before the PTPH is needed to identify cases where acceptable pleas can be forthcoming, or which should not proceed;
- The real issues of a contest must be identified clearly for the judge and defence advocates will be expected to identify at PTPH reasonable lines of enquiry requested from the prosecution and/or levels of extraction of electronic devices rather than waiting for the defence statement stage. Parties will be expected to have given careful consideration to the witness requirements and time estimate so that, as best can be done at that stage, the time estimate is solid;
- The BCM handbook requires that the PTPH form be completed “two days before the hearing although changes can be made up to and during the hearing<sup>2</sup>”. Where this is done it allows better consideration of trial dates by all parties and the court;
- A listing officer will be available before the PTPH court to discuss possible listing dates so that, where it is clear there will need to be a trial, prosecution and defence can see whether a mutually suitable date is available subject to the judge’s approval. In appropriate cases that will be an opportunity to identify a judge to whom the case can be allocated. That listing process must necessarily have regard to custody time limits, the young witness protocol, and in time, s.28 issues;
- The PTPH court will have a range of dates to offer for example for 5 day fixtures; 4 day fixtures; 3 day Fixed floaters; 2 day Fixed Floaters.

### **Stage 2 Compliance**

It remains the duty of the defence solicitor to ensure that the Stage 2 orders are complied with or, where justified, an application is made for an extension.

The court will continue to seek to monitor compliance with Stage 2 as, where there is non-compliance that is an early indicator that trial preparation is, whether it be default by the prosecution or defence, going awry.

### **More engagement pre-trial and at Certificate of Readiness Stage.**

- The benefits of better “case ownership” should be seen in better engagement pre-trial, considered witness lists and considered Certificates of Readiness;
- The reviewed time estimates in the Certificates of Readiness will be used for listing and advocates will be expected to keep to them;
- If Certificates of Readiness assert that a case is trial ready, then advocates will be expected to be ready for a jury when the trial is called on;
- If Certificates of Readiness identify issues we will try, so far as possible, to deal with these by telephone hearings which trial counsel will be expected to dial in on;

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<sup>2</sup> Better Case Management Handbook Jan 2018 – para 3.11

- If Certificates of Readiness are not filed on time parties must expect the case to be listed for a PTR requiring the attendance of the defence solicitor with conduct and the defendant;

### **Judicial involvement in Case Progression**

During the 7 days after the due date for Certificates of Readiness the case will be reviewed by a judge to confirm the state of readiness and if necessary give directions or require a rapid pre-trial review hearing. This will be done in conjunction with the court case progression and listing teams.

- Where the case is allocated to a judge and that judge is available the review will be done by that judge;
- In other cases, one of the full time Circuit Judges will act as “Case Progression Judge” to carry out the reviews. This judge will be allocated time out of court for this purpose.

### **Non-Trial short matters – PTPH and Sentencing etc.**

Harrow and Isleworth will each aim to sit:

- A daily PTPH court. This will have a maximum of 8 PTPH per morning and 4 per afternoon in accordance with the Better Case Management Handbook<sup>3</sup>. If these include multi-handers or cases with contested bail applications, the maximum will need to be reduced. Other work will be listed in the PTPH court only if there is spare capacity. A case where at PTPH a person pleads guilty and can be sentenced where the court were not notified in advance may be transferred to another court with capacity.
- A Sentence and Applications court to deal with committals for sentence, bail applications, mentions and the like or additional PTPH where needed. Requests for a hearing without the provision of a sensible time estimate are likely to be rejected and the parties are expected to complete the hearing within the time estimate. If there is little work for such a court that day a trial may be listed to follow with a suitable time marker.

The court will aim to give time markers on lists to assist advocates in knowing when their case will be called. So that can work, and in so far as can be achieved:

- Advocates will need to be ready within their time allocation;
- PVL conferences will need to be completed on time;
- If a case listed for PTPH is in fact likely to be a plea and sentence, or require a non-standard amount of time, it is hugely helpful if the list office is informed in advance so that time can be allocated.

Listing will seek to avoid listing short non-trial matters in courts dealing with trials unless:

- The case is reserved to that particular judge; OR
- A reasonable request from a trial advocate to have a matter they are involved in listed in the same court can, in the opinion of the trial judge, be accommodated AND
- There is an opportunity to warn the sitting jury in advance and a solid time estimate of the time needed.

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<sup>3</sup> Better Case Management Handbook Jan 2018 – para 3.4

## **Pre-Trial hearings**

So far as practicable pre-trial hearings on administrative matters will be telephone hearings in the time-slot 9:30-10:00<sup>4</sup>.

Where the court is concerned about apparent failures to comply with orders or to engage appropriately the case may be listed for the attendance of the defendant and/or solicitor with conduct and the attendance of other parties may either be dispensed with or permitted by telephone.

Where the court is concerned about apparent failures of disclosure the case may be listed for the attendance of the OIC in which case a telephone hearing may not be practicable.

## **Court Hours - 10am to 4:30pm**

Cases will be listed within normal court operating hours of 10am to 4:30pm with the following exceptions:

- Telephone hearings of up to 30 mins maximum may be listed 9:30-10:00;
- Exceptionally at the request of parties.

## **How will we find out if this works?**

The usual statistics including the “cracked trial” form will be used. We will be looking at the stages where guilty pleas were entered, how long cases take from sending to the commencement of the trial, witness waiting times and at levels of jury utilisation.

In addition, for each case listed for trial there will be a short form to be completed by parties and the judge which will capture information such as:

- Was the trial ready to commence when called?
- Did the case run to timetable and if not why not?
- Were the prosecution and defence advocates those originally instructed?
- Whether the case had been transferred between court centres?
- Whether the Standard Witness Table and Certificates of Readiness had shown the true picture.

## **Better Case Management Handbook**

The SPJ issued the Better Case Management Handbook in January 2018 – a copy can be found by clicking on the “Guidance” tab on the landing page of the DCS. This experiment seeks better to apply those principles – there is no change to them.

## **The Woolwich Model**

The Crown Court at Woolwich will be trialling a different system for comparative purposes. For details apply to Woolwich.

## **Other Courts**

This trial is limited to Harrow and Isleworth. It is recognised that there may be some conflicts for advocates between listings at these courts and listings at other courts that

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<sup>4</sup> Better Case Management Handbook Jan 2018 – para 3.19

maintain a warned list system but that is an inevitable consequence of a limited trial. We will try to take that into account.

### **Feedback and Ideas**

This is a new approach. It follows that we welcome feedback and suggestions for improvement. Please submit these via the listing officers.

In due course we will be asking for feed-back and if this has been a better system for users it will be very important for you to register that.