



**COVID 19**  
**LONDON AND SOUTH EAST RESIDENT JUDGES' LISTING POLICY**  
**Second Edition 6<sup>th</sup> May 2020**

**Guidance from the Resident Judges of London and the South East with the authority of the Presiding Judges**

This document is intended to give guidance on how the Resident Judges expect to approach listing of cases **in the immediate future**. Local adaptations may be necessary. **Changes will be required as the situation develops and in the light of further directions from the Lord Chief Justice.**

**ATTENDANCE AT HEARINGS**

1. All hearings by video or audio links are subject to a judge making live link directions. Any party wishing to make representations against the making of video or audio link directions should email submissions to the court AND post a widely shared comment on DCS by 10am on the day before the hearing.
2. Where a party has an application (for instance re listing a case or for live link directions) that requires judicial involvement it is helpful if it is made by email with "for the attention of the duty judge" in the subject line AND posted as a widely shared comment on DCS.
3. For most hearings, advocates will be expected to appear by video or audio link (as specified by the court and the court clerk will record attendance on Xhibit). Advocates attending by video link should wear business attire (not robes). Advocates attending by video must use a device that allows them to see all participants. A mobile device that does not comply with the law.
4. Defendants in custody will attend by video link when required.
5. Defendants on bail will not be required to attend in person (unless specifically ordered to attend) but where a defendant is entitled to attend:
  - a. If the court is an open court the defendant may choose to attend the hearing in person;
  - b. If the court is a suspended or staffed court the defendant may choose to attend the open court at which the hearing may be observed, or by remote link following the procedure in paragraph 7b. below.
  - c. A defendant may only attend remotely if application has been made in advance and a judge has made a live link direction having been satisfied that the proposed live link is "appropriate" (CrimPD I 3N.4)
6. Unless otherwise directed interpreters must use the same platform as the other participants (ie. Skype for Business for SfB hearings; telephone for telephone hearings; CVP for CVP hearings)
7. Press and public may attend open courts to observe proceedings at that court or relayed from suspended or staffed courts. 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.

- a. Press or other media may apply by email to the court for a link to live link hearings and such requests will ordinarily be granted.
  - b. Any other person wishing to observe may only attend remotely if application has been made in advance and a judge has made a live link direction having been satisfied that the proposed live link is “appropriate” (CrimPR 3.2(4); CrimPD I 3N.4)
8. Any person attending in person may, subject to issues of security, identity or audibility wear a suitable mask.
9. An advocate attending in person a hearing where others are attending by SfB/CVP must bring a suitable device so as to be able to join the SfB/CVP room so as to be visible to other participants.
10. **Contempt of Court:** the statutory prohibition on recording/broadcasting any court-hearing applies to any remote hearing and breach amounts to a criminal offence and CrimPD I 3N.16 provides:
 

*Where a live link is used, the immediate vicinity of the device by which a person attends becomes, temporarily, part of the courtroom for the purposes of that person’s participation. That person, and any advocate or legal representative, custodian, court officer, intermediary or other companion, whether immediately visible to the court or not, becomes a participant for the purposes of CrimPR 1.2(2) and is subject to the court’s jurisdiction to regulate behaviour in the courtroom. The substance and effect of this direction must be drawn to the attention of all such participants.*

## LISTINGS

11. No case will be adjourned generally. There will always be a date for FCMH or a trial listing.
12. Where a judge is able to dispense with the attendance of the parties at a hearing because, in the opinion of the judge, the parties have provided adequate information in advance the matter will remain listed as a hearing (no parties).
13. In DCS cases Judges will place a widely shared comment so that there is clarity about each case readily accessible to the parties as well as any formal order. Equivalent arrangements will apply to non-DCS cases.

## JURY TRIALS

14. Plans are being developed to restart jury trials as soon as appropriate arrangements are in place to ensure that it is safe to do so. It is expected that this will start at a small number of Crown Courts which are most suitable because of their size or design and following assessment by Public Health England. This remains under review and parties currently instructed in pending trials should, so far as is reasonably practicable, continue actively to prepare for trial.
15. Vacated trials will be listed for FCMH (and CTL extension where an application is made) unless the court determines that a FCMH is not required.
16. Parties should expect that at a FCMH and/or CTL hearing the court will want to review the case generally to consider with the parties whether a trial remains necessary or whether the case can be resolved in some other way.
17. Aside from such FCMHs if the parties consider that there would be a benefit in a FCMH (for example to seek a Goodyear direction or because sufficient pleas would now be acceptable or some other early resolution could be achieved) the parties

should seek a direction for such a listing with submissions about the need or otherwise for the attendance of the defendant (such application should be by email with “for the attention of the duty judge” in the subject line AND by a widely shared comment on DCS). Advance notice (48 hours) is required for Goodyear directions.

### CTL APPLICATIONS

18. 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’.  
<https://www.cps.gov.uk/sites/default/files/documents/publications/Coronavirus-Protocol-for-CTL-cases-signed-27032020.pdf#8.2>
19. The court may make a decision to extend CTLs at a hearing in public or in private. (CrimPR 14.2(2)).
20. **Unopposed applications:** There being no requirement for the parties to attend an unopposed CTL extension application hearing for the duration of the current emergency the court will, if requested, deal with an unopposed CTL extension application at a hearing in the absence of the parties and the defendant on receipt of the prosecution application and notice from the defence that the defendant is aware of his right to make representations and the application is unopposed (such notice should be by email with “for the attention of the duty judge” in the subject line AND by a widely shared comment on DCS).
21. **Opposed applications:** Applications to extend the CTL which are opposed will be dealt with in the usual way, with the defendant attending by video link. The court shall not proceed in the absence of the defendant unless satisfied that the defendant has waived the right to attend or that it would be just to proceed even though the defendant is absent (CrimPR 14.2(1)(c)).

### PTPH

22. **Advocates are expected to comply with their duty of direct engagement (CrimPR 3.3); and to have considered the prospects of resolving the case and, unless guilty pleas are expected, to have ensured that the PTPH form is completed before the day of the hearing.**
23. At some SE Circuit courts listed in Appendix A arrangements have been put in place (to apply to new PTPHs from 11<sup>th</sup> May 2020) so that, where NG pleas are indicated and the parties provide adequate information in advance, the judge may dispense with the attendance of the advocates and defendant at the listed hearing. Appendix A sets out the process for this. This process has been approved as effective in securing remuneration for advocates by the Legal Aid Agency and the Crown Prosecution Service.
24. Otherwise PTPHs will proceed in the usual way either at the first hearing or an adjourned hearing (to be determined by the court) with advocates attending remotely.
25. **D in Custody:** In the absence of representations why this would not be appropriate the defendant will be required to attend by video link and the defendant will be arraigned, and directions given.
26. **D on bail:** (see bail applications below). The defendant will not be required to attend but may choose to do so (see para 5) If present the defendant will be expected to

enter a plea. If not present the defence advocate will be expected to provide a firm indication as to the anticipated plea and directions will be given.

27. At a “not guilty” PTPH the judge will either identify a trial listing or direct a FCMH and give as full PTPH directions as can be given.
28. If the defendant pleads guilty or it is indicated that the defendant, if present, would plead guilty, the court will consider, in the case of a defendant who is present, whether to sentence straightaway, or give directions for sentencing on a subsequent occasion.

#### **SENTENCES or LISTING FOR CHANGE OF PLEA**

29. **D in custody:** These sentences to proceed if ready. Advocates may appear in person or remotely by video link, and the defendant will ordinarily be sentenced over the PVL unless the defence identify reasons why a live link (video) direction should not be made.
30. Where a defendant is under 18 the court will consider whether, exceptionally, a live link (video) direction is appropriate to the case and the defendant’s legal representatives and YOT worker must make representations in advance of the hearing if they consider that it would not be appropriate. Arrangements for the participation of the YOT worker must be made (CrimPD I 3N13-15)
31. **D on bail:** The court will determine when to list for sentence and give directions including as to the manner in which the defendant shall appear. Parties should make any relevant representations, including as to the manner of appearance or any need for reports by email AND widely shared comment on the DCS.

#### **BAIL APPLICATIONS – APPEALS AGAINST GRANT OF BAIL – 48 HOUR BAIL HEARINGS**

32. **D in Custody:** To be listed for hearing with advocates having opportunity to attend remotely by video link. If the defendant is required, that is to be by video link if practicable.

#### **BAIL VARIATIONS**

33. **D already on Bail:** There will be a judicial assessment of urgency. The courts will expect to deal without a hearing with applications for variation etc based on representations. If a hearing is essential, then the case will be listed with advocates having opportunity to attend remotely by video link. The defendant will not be required to attend but may choose to do so (see para 5).

#### **INTERIM HOSPITAL ORDERS**

34. To be listed for parties to attend by video link. If defendant required, that is to be by video link from custody or hospital if practicable.

#### **PRODUCTION ORDERS; WARRANTS ETC.**

35. To be dealt with administratively where possible. If a hearing is required, then applicant to attend remotely and preferably by video link. Information on oath in support may probably be given over the ‘phone (in contrast to sworn evidence) but alternatively, and beyond challenge, a video link can be used with usual recording on hand-held or DARTS. Personal attendance is not acceptable unless there are strong reasons why a remote link cannot be used.

#### **DISMISSAL HEARINGS:**

36. **D in Custody:** Subject to urgency and availability of court time to be listed for determination with defendant by PVL and parties attending remotely if possible. Parties may make representations via the list office.
37. **D on Bail:** Subject to urgency and availability of court time to be listed for determination with parties attending remotely if possible. Unless otherwise ordered the defendant is not required to attend but may do so in person if he or she so chooses.

#### **APPEALS**

38. **Appellant in custody:** In the case of appeals against conviction or sentence (with prospect of early release) the court will seek to identify means by which a hearing can take place. 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. There will be a judicial assessment of urgency. 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.
39. **Appellant not in custody:** To be adjourned to a holding date 8 weeks hence (or other period decided by the court) for re-listing when matters clearer.

#### **POCA HEARINGS**

40. Whilst the Government's two metre social distancing rule applies, it is not expected that contested POCA hearings will take place unless arrangements can be made that will accommodate that. Cases will be listed as video link hearings to identify to what extent they are contested and for any necessary adjournment or extension applications. Self-representing defendants to be contacted and offered the opportunity to make written representations rather than attend as appropriate.

#### **EXECUTED BENCH WARRANTS**

41. These will be dealt with in the usual way, and advocates can appear in person or remotely by video link. Police to notify the court before bringing the person to the court building so that a judge may consider if production in person is required; whether an appropriate live link is available from elsewhere; or whether the person can be re-bailed from police custody without a formal hearing.

#### **SELF-REPRESENTING DEFENDANTS**

42. **D in Custody:** PVL to be arranged for FCMH as appropriate.
43. **D on bail:** Listing team to contact the defendant if possible, to prevent attendance unless there is genuine urgency, to ensure communication of court orders and identify best contact information.

#### **PROBATION:**

44. It appears that reports can still be prepared within a timescale of at least 5 weeks and there should be a continuing presence of probation at court (or available remotely). There may be difficulties in access to defendants in custody

45. It is unlikely that any stand down report could be prepared. Interviews with defendants for the purposes of PSRs will probably be conducted by video or audio link. Where such a report is ordered by the court for a defendant on bail he or she will be required to provide contact details.

**DIVERSION AND LIAISON:**

46. Services may be available by remote working.

**WITNESS SUPPORT:**

47. There is very limited or no provision for Witness Support. The London IVWS may be providing support to individual witnesses. Court visits by witnesses are not appropriate at the moment.

6<sup>th</sup> May 2020

## Appendix A:

### COVID 19 - ADMINISTRATIVE PROTOCOL for PTPHs at the following courts: Inner London; Kingston; Luton; Norwich; Snaresbrook

1. **Not less than 7 days prior to the hearing** - All parties to enter their contact details on the (right hand) side bar of the DCS file.
2. **Not less than 2 days prior to the hearing** - All parties to confirm by widely shared note on DCS that they have made contact and that:
  - a. the matter is to be resolved by acceptable guilty plea(s) or by the prosecution offering no evidence, OR
  - b. the matter will proceed to trial, the defendant has been given all of the standard warnings, a draft timetable (to include: trial estimate, type of listing sought, and dates to avoid) is set out, and that the PTPH form has been completed.
  - c. If all parties agree that, within normal parameters, a Judge's view may assist in avoiding the necessity of a trial, an agreed succinct statement of the issue is to be placed in the applications section of the DCS.
3. **Not less than 24 hours prior to the hearing** -
  - a. If the appointed judge determines that the attendance of the advocates at PTPH can be dispensed with the Judge will place a widely shared comment on the DCS, and
  - b. If the appointed judge considers it appropriate to respond to any request for a view etc. the judge will do so.
4. **The PTPH will be listed in the normal way-**
  - a. If the attendance of advocates and defendant has been dispensed with, the hearing will remain listed for PTPH (no parties); neither advocates nor defendant are required to attend, the Judge will announce the orders made and upload a copy.
  - b. Otherwise attendance is required.
    - i. Defendants in custody will join by video link.
    - ii. For defendants on bail, best efforts should be used to secure the attendance. Bail will continue (subject to potential variation of conditions) and, in the event of guilty pleas, sentence will be adjourned until the courts return to normal operation, subject to a review.

6<sup>th</sup> May 2020