



Laurene McAlpine
Principal Private Secretary

LORD CHIEF JUSTICE'S OFFICE,
ROYAL COURTS OF JUSTICE, BELFAST, BT1 3JF
TELEPHONE: (028) 9072 4614 • FAX: (028) 9023 6838
E-MAIL Laurene.McAlpine@courtsni.gov.uk

7 November 2011

Reas Ms Donnelly

**COMMITTEE INQUIRY INTO THE CRIMINAL JUSTICE SERVICES
AVAILABLE TO VICTIMS AND WITNESSES
OF CRIME IN NORTHERN IRELAND**

Thank you for your letter of 7th October 2011. Please treat this correspondence as the submission to the Inquiry on behalf of the Lord Chief Justice of Northern Ireland. We do not consider it necessary to give oral evidence to the Committee. The judiciary do not comment on policy matters, as this is a matter for Government, and we therefore confine our comments to operational issues.

Importance of Victims and Witnesses to the Criminal Justice System

- 1.1 The Lord Chief Justice, as President of the Courts and head of the Judiciary in Northern Ireland recognises that witnesses are absolutely vital to the running of the courts. If witnesses are not willing to come to court to give evidence then the courts would not be able to function. It is important that they have confidence in the process.
- 1.2 The judiciary are committed to working with others in the justice system to ensure that when a victim or a witness comes to court to give evidence, their needs are considered and met. This is particularly important when dealing with young or vulnerable witnesses.

Forthcoming CJINI Report on Victims and Witnesses

- 1.3 The forthcoming report on victims and witnesses prepared by Dr Maguire no doubt will highlight some areas for improvement. Members of the judiciary met with Inspectors from the Criminal Justice Inspectorate during the preparation of this report and gave their views on how the current system can

be improved . We understand that Witness Care Units may be recommended. If so, the judiciary would welcome this , as we consider that such a Unit would significantly improve the experience of witnesses through the system. It should also improve the level and consistency of contact which the PPS/PSNI have with a victim, and this will ensure that accurate information about the witnesses needs and their availability will be before the court at the earliest possible opportunity.

Practice Direction 3/2011

- 1.4 Concern for victims and witnesses was one of the major drivers for change in relation to a new Practice Direction for the listing of trials in the Crown Court. The Lord Chief Justice issued Practice Direction 3/2011 (copy enclosed) entitled "Listing of trials, agreement of non-essential witnesses and obtaining of witness availability". This Practice Direction came into effect on 5th September 2011 for the Divisions of Belfast and Antrim (on a pilot basis).
- 1.5 The practice direction has changed the way in which cases are listed for trial in the Crown Court. This change was brought about because the judiciary became concerned that a significant number of witnesses were being contacted for their availability to attend a trial, and indeed trial dates were being fixed, before a defendant had entered a plea of guilty or not guilty. This resulted in unnecessary distress and upset to witnesses who were being contacted for their availability for a trial, when the defendant subsequently entered a plea of guilty at arraignment, and a trial was therefore not required. As a result of this, the Chief Justice, in co-operation with the PPS and the PSNI decided to issue a new practice direction which means witnesses are contacted about trial dates only if the defendant pleads not guilty.
- 1.6 The judiciary were also increasingly concerned about the high number of non-essential witnesses whose attendance was being requested at trial. The practice direction aims to reduce those non-essential witnesses having to come to court to give evidence by encouraging the defence and PPS to agree which witnesses are essential.
- 1.7 The stated aims of the practice direction are to:
 - ensure both the prosecution and the defence take adequate and prompt steps to check witness availability so as to ensure that avoidable adjournments, and hence avoidable delay, can be prevented;
 - improve arrangements for the notification of witnesses and checking witness availability in order to avoid witnesses being notified unnecessarily that they will be required to give evidence; and

- ensure the agreement of non-essential witnesses whose evidence may be read at trial.

1.8 The new practice direction has been in place since the beginning of this legal term, and we are monitoring the situation closely, we are hopeful that this method of listing trials will be rolled out throughout the other divisions in the New Year.

Engagement with the DoJ, other agencies and victims groups

1.9 The judiciary, although independent, do not act in isolation. The Lord Chief Justice and the judiciary engage with other criminal justice agencies regularly in relation to the needs of victims and witnesses, where this is appropriate:

- The Lord Chief Justice is represented by a senior official from his office on the 'Vulnerable Victims and Witnesses Working Group', which is chaired by the Department of Justice. This Group includes representatives from the PPS, the PSNI, Court Service, victims groups and Probation.
- Lord Justice Higgins is the Chairman of the Criminal Justice Issues Group, which has recently increased its membership to include a representative from Victim Support, to ensure that the views of victims and witnesses are represented on the Group.
- The Criminal Justice Issues Group is in the process of organising a workshop, which will be chaired by Lord Justice Higgins, and which will be focussed on practical ways to improve the experience of victims and witnesses.


Other Initiatives

1.10 Mr Justice Hart, the Chairman of the Criminal Court Judicial Committee recently attended a meeting of the Criminal Justice Delivery Group, which is chaired by the Minister of Justice. At this meeting, some initiatives which the Department is taking forward and which may be of assistance to witnesses were discussed.

1.11 The judiciary are supportive of reforming the committals process to remove the right to call witnesses at committal proceedings (known as a PI or a mixed committal). Calling witnesses at committal stage may be intimidating for the witness and is not considered a useful or necessary process. The judiciary do not see any operational advantage for the courts, or witnesses, in retaining PI's or mixed committals for any type of criminal proceedings.

We look forward to reading your final report on this very important issue and if we can be of any further assistance, please do not hesitate to contact me directly.

Yours sincerely

Laura Murphy 

Ms Roisin Donnelly
Assistant Clerk
Committee for Justice
Room 242 Parliament Buildings
Belfast BT4 3XX



PRACTICE DIRECTION 3/2011

IN THE CROWN COURT OF NORTHERN IRELAND

**LISTING OF TRIALS, AGREEMENT OF NON-ESSENTIAL WITNESSES
AND OBTAINING OF WITNESS AVAILABILITY**

Introduction

The purpose of this Practice Direction is to:

- ensure that both the prosecution and the defence take adequate and prompt steps to check witness availability so as to ensure that avoidable adjournments, and hence avoidable delay, can be prevented;
- improve arrangements for the notification of witnesses and checking witness availability in order to avoid witnesses being notified unnecessarily that they will be required to give evidence; and
- ensure the early agreement of non-essential witnesses whose evidence may be read at trial.

As part of this process Crown Court offices will no longer allocate stand-by or trial dates before arraignment.

NOTE. The target times set by (Practice Direction 5 of 2006) are unaffected.

1. This direction specifies the procedure to be followed for the early agreement of non-essential witnesses, the listing of trials and the obtaining of witness availability.
2. A defendant will be arraigned within 6 weeks of being sent for trial.
3. After a defendant has been sent for trial, and in advance of the arraignment date, the PPS will send to the defence a list of witnesses whose evidence it is suggested can be agreed.

4. Where a defendant enters a not guilty plea at arraignment, the judge will determine whether or not the case is:
 - (a) suitable for an early trial; or
 - (b) not suitable for an early trial as there are issues which could require time to resolve (for example screening, PII, disclosure, expert witness issues).

Cases suitable for early trial

5. Where the case is suitable for early trial the judge will, at arraignment, fix the stand by and trial dates for a date within the next 12 weeks.
6. The judge will, at arraignment, ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed.
7. Following arraignment, both the PPS and the solicitor(s) for the defendant(s) will **immediately** notify all witnesses whose attendance is required at trial of the stand by and trial dates. The initial contact will be by telephone call or email on the day of arraignment, or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses, by:
 - (a) in the case of civilian witnesses by a requirement to attend served by the PSNI;
 - (b) in the case of expert witnesses contact by the PPS or the PSNI as appropriate; or
 - (c) in the case of police witnesses by the PPS or PSNI as appropriate.
8. Where a witness does not confirm within five working days of the delivery of the requirement to attend, or in respect of defence witnesses within five working days of being notified, that they will attend court, an application for a witness summons will be made **immediately** by the party requiring the attendance of the witness(es).
9. Confirmation of attendance at court will be on the basis of receipt of a pro-forma reply or direct contact with the witness from civilian prosecution witnesses, or in the case of defence witnesses direct contact with the witness to confirm their attendance.
10. The judge will list the case for a review hearing 2 weeks after the arraignment where the stand by and trial dates will be confirmed or varied in light of the PPS and defence information about witness availability.

11. Where it becomes apparent that the date may have to be varied, both the prosecution and the defence will come to the review hearing with witness availability for a further 12 week period starting with the original trial date, or will have furnished the witness availability to the case progression officer in advance of the first review hearing if possible.

Cases not suitable for early trial

12. At arraignment, when a judge is determining whether or not a case is suitable for an early trial, the judge will determine this on the basis that the case involves issues which could require time to resolve, for example screening, PII, disclosure, expert witness issues etc.
13. At arraignment, the judge will ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed.
14. The judge will determine which issues require resolution, and get indicative timescales from the representatives when the issues are likely to be resolved.
15. The judge will then timetable a hearing for all issues to be resolved. This hearing should be within 4 – 6 weeks of arraignment. The parties should attend with the availability of the witnesses required for trial, and, if possible, the judge will fix the stand-by and trial dates at that hearing.
16. If it has not been possible to fix the stand by and trial dates at arraignment, then once the issues in the case have been resolved, or the judge is satisfied that they can be resolved by the trial, the judge will fix the stand by and trial dates for a date within the next 12 weeks.
17. Once the dates have been fixed the PPS and the solicitor(s) for the defendant(s) will immediately notify all witnesses whose attendance is required at trial of the stand by and trial dates. The initial contact will be by telephone call or email on the day on which the date is fixed , or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses by:
 - (a) in the case of civilian witnesses by a requirement to attend served by the PSNI;
 - (b) in the case of expert witnesses contact by the PPS or the PSNI as appropriate; or
 - (c) in the case of police witnesses by the PPS or PSNI as appropriate.

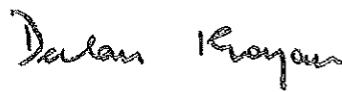
18. Where a witness does not confirm within five working days of the delivery of the requirement to attend, or in respect of defence witnesses within five working days of being notified, that they will attend court, an application for a witness summons will be made immediately by the party requiring the attendance of the witness(es).
19. Confirmation of attendance at court will be on the basis of receipt of a pro-forma reply or direct contact with civilian prosecution witnesses, or in the case of defence witnesses direct contact with the witness to confirm their attendance.
20. Where it becomes apparent that the date may have to be varied, both the prosecution and the defence will come back before the court with witness availability for a further 12 week period starting with the original trial date, or will have furnished the witness availability to the case progression officer in advance, if possible

COMMENCEMENT and EXTENT

This Practice Direction will come into effect on 5th September 2011.

This Practice Direction applies to the County Court Division of Belfast, and the County Court Division of Antrim.

Dated this 31st day of August 2011



The Right Honourable Sir Declan Morgan
Lord Chief Justice of Northern Ireland