

Chapter 2 (Bail): Update

General

Offender Management Statistics (Ministry of Justice):

Prison population (June 2016):

85,134 of whom:

9,288 were remand prisoners, of whom:

6,278 were untried, and 3,010 were convicted but awaiting sentence.

2.2: Adjournments

A defendant who is unable to attend court because of illness should obtain a medical certificate that effect. *Criminal Practice Direction I*, paragraph 5C.3, notes that a court is:

not absolutely bound by a medical certificate. The medical practitioner providing the certificate may be required by the court to give evidence. Alternatively, the court may exercise its discretion to disregard a certificate which it finds unsatisfactory.

Paragraph 5C.4 goes on to say that circumstances where the court may find a medical certificate to be unsatisfactory include:

- (a) Where the certificate indicates that the defendant is unfit to attend work (rather than to attend court);
- (b) Where the nature of the defendant's ailment (e.g. a broken arm) does not appear to be capable of preventing his attendance at court;
- (c) Where the defendant is certified as suffering from stress/anxiety/depression and there is no indication of the defendant recovering within a realistic timescale.

Paragraph 5C.5 sets out what it describes as the 'minimum standards' for a medical certificate:

- (a) The date on which the medical practitioner examined the defendant;
- (b) The exact nature of the defendant's ailments;
- (c) If it is not self-evident, why the ailment prevents the defendant attending court;
- (d) An indication as to when the defendant is likely to be able to attend court, or a date when the current certificate expires.

In *DPP v Radziwilowicz* [2014] EWHC 2283 (Admin); (2014) 178 JP 432, the case had been adjourned for a week to enable the prosecution to obtain witness statements and to review the charges. When the hearing resumed, witness statements were not available. Pleas of not guilty were entered and the solicitor acting for the accused invited the court to proceed with the trial. The prosecutor objected on the grounds that he did not have any evidence to proceed and, as an associate prosecutor, he did not have authority to conduct a trial. The court refused the adjournment. The prosecutor offered no evidence, and the case was dismissed. The prosecution successfully appealed by way of case stated. Sir Brian Leveson P (at [8]) referred to the judicially-led initiative known as 'Stop Delaying Justice', the aim of which is that 'all contested trials in the magistrates' court will be fully case managed in the first hearing and disposed of, by way of trial or otherwise, at the second'. His Lordship noted that 'such a course might be adopted if the initial or advanced disclosure contains all of the likely available evidence of note' and the 'prosecution evidence is not challenged and the only evidence, if any, will be that of the defendant'. His Lordship emphasised (at [9]) that the 'real issue' is the 'fairness of the proceedings to all parties'. In the present case, given the terms on which the case had been adjourned, there was no obligation on the prosecution to have their witnesses available. Rather, they were to be in possession of enough material to

enable the case to be advanced sufficiently and without the need for a further interlocutory hearing. Moreover, the fact that the prosecutor present in court was not authorized to conduct trials made it clear that the trial could not proceed on that occasion.

In *DPP v Petrie* [2015] EWHC 48 (Admin), Gross LJ (at [19]) observed that ‘efficiency, expedition, the discouraging of delay and the avoidance of unnecessary hearings are adjuncts of dealing with cases justly and it may be said, in the summary jurisdiction, summarily. Adjournments ... run contrary to these important objectives’. His Lordship went on to say (at [20]):

Although there are of course instances where the interests of justice require the grant of an adjournment, this should be a course of last rather than first resort – and after other alternatives have been considered ... It is essential that parties to proceedings in the magistrates’ court should proceed on the basis of a need to get matters right first time; any suggestion of a culture readily permitting an opportunity to correct failures of preparation should be firmly dispelled.

His Lordship added (at [21]) that appellate courts should be ‘slow to interfere’ with case management decisions which have endeavoured to give effect to this approach, and that the grant or refusal of an adjournment ‘is a paradigm example of a discretionary case management decision where an appeal ought only to succeed on well-recognised but limited grounds (for example, error of principle, error of law or where the decision can properly be characterised as plainly wrong)’.

2.6 Options open to defendant where bail refused

2.6.2 Application to the Crown Court

The provision that bail hearings may take place in a public or private hearing is now to be found in rule 14.2(2) of the Criminal Procedure Rules.

2.7 Prosecution challenges to decision to grant bail

2.7.2 Appeal to the Crown Court

In *R (Cardin) v Birmingham Crown Court* [2017] EWHC 2101 (Admin), the prosecutor gave oral notice of an intention to appeal the granting of bail at 12.54 p.m. Written notice of the prosecution’s intention to appeal the granting of bail was given to the court officer at the magistrates’ court at 1.56 p.m. However, the remand warrant incorrectly stated that the written notice of appeal had been served on the defendant at 12.54 p.m. The written notice was not served on the defendant because he had (in error) already been sent to the prison where he was to be held pending the disposal of the prosecution appeal against the grant of bail. Attempts by the court to secure service of the notice on the defendant at the prison were unsuccessful. The Bail (Amendment) Act 1993, s 1(5), stipulates that written notice of appeal must be served on the magistrates’ court and on the defendant “within two hours of the conclusion of the bail proceedings; subs (7) goes on to state that, where the prosecution fails, within that period of two hours, to serve one or both of those notices, “the appeal shall be deemed to have been disposed of”. Andrews J ruled (at [46]) that:

[I]t cannot have been Parliament’s intention that the Crown should lose the opportunity to reverse a decision that was wrong in principle, with the result that a defendant who might abscond or commit further offences or interfere with prosecution witnesses was released on bail, if the reason why the notice of appeal was not served in time (or indeed at all) was outside the prosecution’s control.

She added (at [47]):

The word 'fails' in this context carries with it an implication of fault, and would not generally be used to describe the situation in which a person is unable to do something. One dictionary definition of 'fails' is 'to neglect to do something', and in our judgment that is the sense, rather than the wider sense of 'being unsuccessful in achieving one's goals' in which the word should be understood in this specific context.

2.8 Failure to surrender to custody

The letter from the Senior Presiding Judge, dated 5 May 2006, on failure to surrender, has been revoked (on the basis that it is unnecessary given the detailed guidance now to be found in the *Criminal Practice Directions*).

2.9 Custody Time Limits

2.9.1 Extending the time limit

In *Campbell-Brown v Central Criminal Court* [2015] EWHC 202 (Admin), Jay J (at [65]) emphasised the importance of focussing on the statutory criteria for extending custody time limits:

[T]rials involving defendants remanded in custody should not be listed for trial after the expiry of the custody time limits without proper and rigorous judicial consideration first being given to the statutory questions posed by s 22(3) of the Prosecution of Offences Act 1985, namely (i) whether there is "good and sufficient cause" for granting the extension, and (ii) whether "the prosecution has acted with all due diligence and expedition". The errors perpetrated in this case arose because the decision-making process was segmented; and, in consequence, performed in the wrong sequence.