

**REGIONAL CONFERENCE OF
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CRIMINAL JUSTICE AND ITS
ADMINISTRATION BEST PRACTICES**

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*Effective Mechanisms for management of Pre-Trial Detention in sub-Saharan
Africa*

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Pre- trial Detention

Pre-trial detention is a major challenge for criminal justice systems globally, especially in democratic societies that are signatories to international treaties such as the

- United Nations Charter on Human Rights 1948
- European Convention on Human Rights 1950
- The African Charter on Human and People's Rights 1981

Effective management of Pre-Trial detention

To address effective management of pre trial detention, my presentation is focused on the law and practice within the jurisdiction of England and Wales where I have practiced for over 30 years

I will speak on the following topics:

- ▶ Structure of Criminal Courts in England and Wales
- ▶ HM Courts and Tribunals Service
- ▶ Legislation and Practice Directions
- ▶ Criminal Procedure Rules
- ▶ Technology
- ▶ Funding

Magistrates' Courts

- ▶ 95% of criminal cases are heard in the magistrates' court (MC)
- ▶ Exclusive jurisdiction for 'summary only offences' including most Road Traffic, Minor Public Order and Assault offences
- ▶ 'Either Way' offences, i.e., triable at MC or Crown Court
- ▶ 2-3 Lay Justices with Qualified Legal Adviser
- ▶ District Judge (busy courts and complex cases)
- ▶ Youth Court (offenders aged 10-17)

CROWN COURTS

- ▶ Either way offences
- ▶ Indictable only offences: Homicide, Rape, Robbery
- ▶ Appeal Court from MC
- ▶ Judge plus Jury (12 jurors)
- ▶ Recorders (part-time judges)
- ▶ Circuit Judges sit full time
- ▶ Ticketed' Judges for trial of Murder and Rape trials

HM Courts and Tribunals Service (HMCTS)

- ▶ Executive Agency of the Ministry of Justice
- ▶ Established initially in 2005 as HMCS; 2011 Tribunals joined
- ▶ Responsible for the admin of Criminal, Civil and Family Courts plus Tribunals in England and Wales
- ▶ Vision- to deliver a world class justice system that works for everybody
- ▶ Chief Executive responsible for Directorates ad Business Units
- ▶ CEO accountable- MOJ Permanent Secretary- Secretary of State for Justice

Directorates

- ▶ HR
- ▶ Property
- ▶ Strategy and Change
- ▶ Finance, Governance and Performance
- ▶ Operations
- ▶ Digital and Technology

HMCTS Case Workload Per Annum(Average)

- ▶ Criminal Courts 1.5 million
- ▶ Civil Courts 2 million
- ▶ Tribunals (Employment; Immigration, Social Security, Mental Health,etc) 480,000
- ▶ Family Courts 260,000

Statistics(Source: www.gov.uk updated 26.10.22)

- ▶ Total no of individuals dealt with by CJS (Year Ending 31 March)
- ▶ Y.E. March 2020 1.56 million
- ▶ Y.E. March 2022 1.36 million, an increase of 21% from 2021 but 12% less than 2020 (following COVID lockdowns)

Proportion of Defendants Remanded on Bail/ Custody (Y.E. March 2022)

- ▶ 13% bailed by police to appear at Magistrates' Court
- ▶ 9% remanded by police prior to appearance at court
- ▶ 4% remanded (awaiting trial) by Magistrates
- ▶ 38% remanded (awaiting trial) by CC Judge

Covid Backlog(Source: Criminal Justice Joint Inspection Report, May 2022)

Magistrates

Y.E. March 2022 359,261 outstanding cases

Crown Court

At the end of Q4 2021 58,818 outstanding cases down by 2% on the previous year (60,049) and by 3% from their peak in Q2 2021 (60,893)

In June 2019, 6% of the remand population was held on remand for more than a year, whereas in June 2021 this represented 12% of the remand population.

Legislation- Bail Act 1976

- ▶ Presumption of unconditional bail
- ▶ Exceptions –
 - Failure to Surrender
 - Commit offence whilst on bail
 - Interfere with witnesses or obstruct Justice

Legislation- Bail Act 1976

- ▶ Bail with conditions
 - Residence
 - Non contact of prosecution witness
 - Surety
 - Security
 - Reporting to Police Station
 - Exclusion zone
 - Curfew with/out Electronic Monitoring(Tagging)

Remand in Custody

Magistrates

S126 MCA 1980 First remand '8 clear days' e.g 1st hearing on Monday, next hearing no later than Wednesday of the following week

Further remands in custody for up to 28days

During periods of remand the case must proceed to the next stage e.g pleas taken. Advocates enabled to make representations at each remand hearing. Defence can make reps on same grounds twice.

Remand in Custody

Appeal against Bail Decision available to Prosecution and Defence

Custody Time Limits S22 Prosecution of Offences Act 1985 & Regs

- ▶ 56 days from 1st appearance to date of Summary Trial
- ▶ 70 days from 1st appearance to commit to CC Trial
- ▶ 112 days from 1st appearance at CC to Trial

CTL EXTENSION S22(3) Prosecution of Offenses Act 1985

Court may at any time before expiry of a time limit, extend or further extend that limit, but **the court shall not do so unless it is satisfied**

(a) That the need for extension is due to

- (i) illness or absence of the accused, a necessary witness, a judge or a magistrate;
- (ii) a postponement which is occasioned by the ordering by the court of separate trials in the case of 2 or more accused or 2 or more offences;
- (iii) some other good and sufficient cause; and

► (b) **that the prosecution has acted with all due diligence and expedition.**

Criminal Procedure Rules (CPR)

S69(4) Courts Act 2003 the power to make or alter CPR to be exercised with a view to securing that the CJS **is accessible, fair and efficient, and that the rules are both simple and simply expressed**

Overriding Objective- Criminal Cases be dealt with **justly**.

- (a) Acquitting the innocent and convicting the guilty
- (b) Dealing with prosecution and defense fairly
- (c) Recognizing rights of a deft, particularly under Art.6 ECHR
- (d) Respecting interests of witnesses, victims and jurors and keeping them informed of the progress of the case
- (e) ***Dealing with the case efficiently and expeditiously***

Criminal Procedure Rules (CPR)

(f) ensuring that appropriate information is available to the court when bail and sentence are considered and

(g) Dealing with a case in ways that take into account –

I. the gravity of the case alleged

II. The complexity of what is in issue

III. the severity of the consequences for the deft and others affected

IV. the needs of other cases

Effective Case Management- Role of the Judge

'Active, hands on, case management, both pre-trial and throughout the trial itself, is now regarded as an essential part of the judge's duty'. R v Jisi [2004] EWCA Crim 696 Judge LJ

Time is not unlimited. No one should assume that trials can take as long or use up as much time as either or both sides may wish or think, or assert, they need.

The entitlement to a fair trial is not inconsistent with proper judicial control over the use of time

'Every trial which takes longer than it reasonably should is wasteful of limited resources. It also results in delays to justices in cases still waiting to be tried, adding to the tension and distress of victims, defendants, particularly those in custody awaiting trial and witnesses.'

R v Chaaban [2003] EWCA Crim 1012 Judge LJ

Possible Solutions

Alternatives to prosecution

- ▶ Cautions
- ▶ Conditional Caution
- ▶ Fixed Penalty Notices
- ▶ Deferred Prosecution Arrangements

Diversion Schemes

- ▶ Mental Health
- ▶ Youth
- ▶ Training