Neutral Citation Number: [2018] EWCA Crim 516

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2018

Before :

LORD CHIEF JUSTICE OF ENGLAND AND WALES

Criminal Practice Directions 2015

Amendment No. 6

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AMENDMENT NO. 6 TO THE CRIMINAL PRACTICE DIRECTONS 2015

Introduction

This is the sixth amendment to the Criminal Practice Directions 2015.[1] It is issued by the Lord Chief Justice on 21st March 2018 and comes into force on 2nd April 2018.

In this amendment:

1. **CPD I General matters 3C: ABUSE OF PROCESS STAY APPLICATIONS is to be amended to include the additional sentence at the beginning of 3C.4:**

   3C.4 Paragraphs XII D.17 to D.23 of these Practice Directions set out the general requirements for skeleton arguments.

2. **CPD I General matters 5B: ACCESS TO INFORMATION HELD BY THE COURT is to be amended by replacing paragraphs 5B.1, 5B.4, 5B.5, 5B.6, 5B.7, 5B.13 and 5B.25 and by adding new paragraphs 5B.31-5B.36 as below:**

[1] [2015] EWCA Crim 1567. Amendment Number 1 [2016] EWCA Crim 97 was handed down by the Lord Chief Justice on 23rd March 2016 and came into force on the 4th April 2016. Amendment Number 2 [2016] EWCA Crim 1714 was handed down by the Lord Chief Justice on 16th November 2016 and came into force on 16th November 2016. Amendment Number 3 [2017] EWCA Crim 30 was handed down by the Lord Chief Justice on 31st January 2017 and came into force on 31st January 2017. Amendment Number 4 [2017] EWCA Crim 310 was handed down by the Lord Chief Justice on 28th March 2017 and came into force on 3rd April 2017. Amendment Number 5 [2017] EWCA Crim 1076 was handed down by the Lord Chief Justice on 27th July 2017 and came into force on 2nd October 2017.

5B.1 Open justice, as Lord Justice Toulson re-iterated in the case of *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618, is a 'principle at the heart of our system of justice and vital to the rule of law'. There are exceptions but these 'have to be justified by some even more important principle.' However, the practical application of that undisputed principle, and the proper balancing of conflicting rights and principles, call for careful judgments to be made. The following is intended to provide some assistance to courts making decisions when asked to provide the public, including journalists, with access to or copies of information and documents held by the court, or when asked, exceptionally, to forbid the supply of transcripts that otherwise would have been supplied. It is not a prescriptive list, as the court will have to consider all the circumstances of each individual case.

5B.4 Certain information can and should be provided to the public on request, subject to any restrictions, such as reporting restrictions, imposed in that particular case. CrimPR 5.5 governs the supply of transcript of a recording of proceedings in the Crown Court. CrimPR 5.8(4) and 5.8(6) read together specify the information that the court officer will supply to the public; an oral application is acceptable and no reason need be given for the request. There is no requirement for the court officer to consider the non-disclosure provisions of the Data Protection Act 1998 as the exemption under section 35 applies to all disclosure made under 'any enactment … or by the order of a court', which includes under the Criminal Procedure Rules.

5B.5 If the information sought is neither transcript nor listed at CrimPR 5.8(6), rule 5.8(7) will apply, and the provision of information is at the discretion of the court. The following guidance is intended to assist the court in exercising that discretion.

5B.6 A request for access to documents used in a criminal case should first be addressed to the party who presented them to the court or who, in the case of a written decision by the court, received that decision. Prosecuting authorities are subject to the Freedom of Information Act 2000 and the Data Protection Act 1998 and their decisions are susceptible to review.

5B.7 If the request is from a journalist or media organisation, note that there is a protocol between the NPCC, the CPS and the media entitled 'Publicity and the Criminal Justice System':

www.cps.gov.uk/publications/agencies/mediaprotocol.html

www.cps.gov.uk/publication/publicity-and-criminal-justice-system

There is additionally a protocol made under CrimPR 5.8(5)(b) between the media and HMCTS:

www.newsmediauk.org/write/MediaUploads/PDF%20Docs/Protocol_for_Sharing_Court_Documents.pdf

This Practice Direction does not affect the operation of those protocols. Material should generally be sought under the relevant protocol before an application is made to the court.

5B.13 Documents likely to fall into this category include:

i. Skeleton arguments
ii. Written submissions
iii. Written decisions by the court

Other documents

5B.25 The following table indicates the considerations likely to arise on an application to inspect or copy other documents.

Document	**Considerations**
Charge sheet Indictment	The alleged offence(s) will have been read aloud in court, and their terms must be supplied under CrimPR 5.8(4)
Material disclosed under CPIA 1996	To the extent that the content is deployed at trial, it becomes public at that hearing. Otherwise, it is a criminal offence for it to be disclosed: section 18 of the 1996 Act.
Written notices, applications, replies (including any application for representation)	To the extent that evidence is introduced, or measures taken, at trial, the content becomes public at that hearing. A statutory prohibition against disclosure applies to an application for representation: sections 33, 34 and 35 of the LASPO Act 2012.
Written decisions by the court, other than those read aloud in public or treated as if so read	Such decisions should usually be provided, subject to the criteria listed in CrimPR 5.8(4)(a) (and see also paragraph 5B.31 below).
Sentencing remarks	Sentencing remarks should usually be provided to the accredited Press, if the judge was reading from a prepared script which was handed out immediately afterwards; if not, then permission for a member of the accredited Press to obtain a transcript should usually be given (see also paragraphs 5B.26 and 29 below).
Official recordings	See CrimPR 5.5.

Transcript	See CrimPR 5.5 (and see also paragraphs 5B.32 to 36 below).

Written decisions

5B.31 Where the Criminal Procedure Rules allow for a determination without a hearing there may be occasions on which it furthers the overriding objective to deliver the court's decision to the parties in writing, without convening a public hearing at which that decision will be pronounced: on an application for costs made at the conclusion of a trial, for example. If the only reason for delivering a decision in that way is to promote efficiency and expedition and if no other consideration arises then usually a copy of the decision should be provided in response to any request once the decision is final. However, had the decision been announced in public then the criteria in CrimPR 5.8(4)(a) would have applied to the supply of information by the court officer; and ordinarily those same criteria should be applied by the court, therefore. Moreover, where considerations other than efficiency and expedition have influenced the court's decision to reach a determination without convening a hearing then those same considerations may be inimical to the supply of the written decision to any applicant other than a party. Reporting restrictions may be relevant, for example; as may the considerations listed in paragraph 5B.9 above. In such a case the court should consider supplying a redacted version of the decision in response to a request by anyone who is not a party; or it may be appropriate to give the decision in terms that can be supplied to the public, supplemented by additional reasons provided only to the parties.

Transcript

5B.32 CrimPR 5.5 does not require an application to the court for transcript, nor does the rule anticipate recourse to the court for a judicial decision about the supply of transcript in any but unusual circumstances. Ordinarily it is the rule itself that determines the circumstances in which the transcriber of a recording may or may not supply transcript to an applicant.

5B.33 Where reporting restrictions apply to information contained in the recording from which the transcript is prepared then unless the court otherwise directs it is for the transcriber to redact that transcript where redaction is necessary to permit its supply to that applicant. Having regard to the terms of the statutes that impose reporting restrictions, however, it is unlikely that redaction will be required frequently. Statutory restrictions prohibit publication 'to the public at large or any section of the public', or some comparable formulation. They do not ordinarily prohibit a publication constituted only of the supply of transcript to an individual applicant. However, any reporting restrictions will continue to apply to a recipient of transcript, and where they apply the recipient must be alerted to them by the endorsement on the transcript of a suitable warning notice, to this or the like effect:

"WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice."

5B.34 Exceptionally, court staff may invite the court to direct that transcript must be redacted before it is supplied to an applicant, or that transcript must not be supplied to an applicant pending the supply of further information or assurances by that applicant, or at all, in exercise of the judicial discretion to which CrimPR 5.5(2) refers. Circumstances giving rise to concern may include, for example, the occurrence of events causing staff reasonably to suspect that an applicant intends or is likely to disregard a reporting restriction that applies, despite the warning notice endorsed on the transcript, or reasonably to suspect that an applicant has malicious intentions towards another person. Given that the proceedings will have taken place in public, despite any such suspicions cogent and compelling reasons will be required to deny a request for transcript of such proceedings and the onus rests always on the court to justify such a denial, not on the applicant to justify the request. Even where there are reasons to suspect a criminal intent, the appropriate course may be to direct that the police be informed of those reasons rather than to direct that the transcript be withheld. Nevertheless, it may be appropriate in such a case to direct that an application for the transcript should be made which complies with paragraph 5B.8 above (even though that paragraph does not apply); and then for the court to review that application with regard to the considerations listed in paragraph 5B.9 above (but the usual burden of justifying a request under that paragraph does not apply).

5B.35 Some applicants for transcript may be taken to be aware of the significance of reporting restrictions, where they apply, and, by reason of such an applicant's statutory or other public or quasi-public functions, in any event unlikely to contravene any such restriction. Such applicants include public authorities within the meaning of section 6 of the Human Rights Act 1998 (a definition which extends to government departments and their agencies, local authorities, prosecuting authorities, and institutions such as the Parole Board and the Sentencing Council) and include public or private bodies exercising disciplinary functions in relation to practitioners of a regulated profession such as doctors, lawyers, accountants, etc. It would be only in the most exceptional circumstances that a court might conclude that any such body should not receive unredacted transcript of proceedings in public, irrespective of whether reporting restrictions do or do not apply.

5B.36 The rule imposes no time limit on a request for the supply of transcript. The assumption is that transcript of proceedings in public in the Crown Court will continue to be available for as long as relevant records are maintained by the Lord Chancellor under the legislation to which CrimPR 5.4 refers.

3. In CPD II Preliminary proceedings 10A: PREPARATION AND CONTENT OF THE INDICTMENT, replace paragraph 10A.3 with the below:

Content of indictment; joint and separate trials

10A.3 The rule has been abolished which formerly required an indictment containing more than one count to include only offences founded on the same facts, or offences which constitute all or part of a series of the same or a similar character. However, if an indictment charges more than one offence, and if at least one of those offences does not meet those criteria, then CrimPR 3.21(4) cites that circumstance as an example of one in which the court may decide to exercise its power to order separate trials under section 5(3) of the Indictments Act 1915. It is for the court to decide which allegations, against whom, should be tried at the same time, having regard to the prosecutor's proposals, the parties' representations, the court's powers under the 1915 Act (see also CrimPR 3.21(4)) and the overriding objective. Where necessary the court should be invited to exercise those powers. It is generally undesirable for a large number of counts to be tried at the same time and the prosecutor may be required to identify a selection of counts on which the trial should proceed, leaving a decision to be taken later whether to try any of the remainder.

4. In CPD V Evidence 18C: VISUALLY RECORDED INTERVIEWS: MEMORY REFRESHING AND WATCHING AT A DIFFERENT TIME FROM THE TRIAL COURT, replace paragraph 18C.4 with the below and add 18C.5:

18C.4 There is no legal requirement that the witness should watch the interview at the same time as the trial bench or jury. Increasingly, this is arranged to occur at a different time, with the advantages that breaks can be taken as needed without disrupting the trial, and cross-examination starts while the witness is fresh. An intermediary may be present to facilitate communication but should not act as the independent person designated to take a note and report to the court if anything is said.

18C.5 Where the viewing takes place at a different time from that of the trial bench or jury, the witness is sworn (or promises) just before cross-examination and, unless the judge otherwise directs:

(a) it is good practice for the witness to be asked by the prosecutor, (or the judge/magistrate if they so direct), in appropriate

language if, and when, he or she has watched the recording of the interview;

(b) if, in watching the recording of the interview or otherwise the witness has indicated that there is something he or she wishes to correct or to add then it is good practice for the prosecutor (or the judge/magistrate if they so direct) to deal with that before cross-examination provided that proper notice has been given to the defence.

5. In CPD V Evidence insert a new practice direction:

CPD V Evidence 22A: USE OF GROUND RULES HEARING WHEN DEALING WITH S.41 YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 (YJCEA1999) EVIDENCE OF COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR

The application

22A.1 When a defendant wishes to introduce evidence, or cross-examine about the previous sexual behaviour of the complainant, then it is imperative that the timetable and procedure as laid down in the Criminal Procedure Rules Part 22 is followed. The application must be submitted in writing as soon as reasonably practicable and not more than 14 days after the prosecutor has disclosed material on which the application is based. Should the prosecution wish to make any representations then these should be served on the court and other parties not more than 14 days after receiving the application.

22A.2 The application must clearly state the issue to which the defendant says the complainant's sexual behaviour is relevant and the reasons why it should be admitted. It must outline the evidence which the defendant wants to introduce and articulate the questions which it is proposed should be asked. The application must identify the statutory exception to the prohibition in s.41 YJCEA 1999 on which the defendant relies and give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

The hearing

22A.3 When determining the application, the judge should examine the questions with the usual level of scrutiny expected at a ground rules hearing. For each question that it is sought to put to a witness, or evidence it is sought to adduce, the defence should identify clearly for the judge the suggested relevance it has to an issue in the case. In order for the judge to rule on which evidence can be adduced or questions put, the defence must set out individual questions for the judge; merely identifying a topic is not sufficient for this type of application. The judge should make it clear that if the application is granted then no other questions on this topic will be allowed to be asked, unless with the express permission of the court.

22A.4 The application should be dealt with in private and in the absence of the complainant, but the judge must state in open court, without the jury or complainant present, the reasons for the decision, and if leave is granted, the extent of the questions or evidence that is allowed.

Late applications

22A.5 Late applications should be considered with particular scrutiny especially if there is a suggestion of tactical thinking behind the timing of the application and/or when the application is based on material that has been available for some time. If consideration of a late application has the potential to disrupt the timetabling of witnesses, then the judge will need to take account of the potential impact of delay upon a witness who is due to give evidence. If necessary, the judge may defer consideration of any such application until later in the trial

22A.6 By analogy, following the approach adopted by the Court of Appeal in *R v Musone* [2007] 1 WLR 2467, the trial judge is entitled to refuse the application where (s)he is satisfied that the applicant is seeking to manipulate the court process so as to prevent the respondent from being able to prepare an adequate response. This may be the only remedy available to the court to ensure that the fairness of the trial is upheld and will be particularly relevant when the application is made on the day of trial.

22A.7 Where the application has been granted in good time before the trial, the complainant is entitled to be made aware that such evidence is part of the defence case.

At the trial

22A.8 Advocates should be reminded that the questioning must be conducted in an appropriate manner. Any aggressive, repetitive and oppressive questioning will be stopped by the judge. Judges should intervene and stop any attempts to refer to evidence that might have been adduced under s 41, but for which no leave has been given and/or should have formed the basis of a s41 application, but did not do so. When evidence about the complainant's previous sexual behaviour is referred to without an application, the judge may be required to consider whether the impact of that happening is so prejudicial to the overall fairness of the trial that the trial should be stopped and a re-trial should be ordered, should the impact not be capable of being ameliorated by way of jury direction.

6. In CPD V Evidence insert a new practice direction:

CPD V Evidence 23A: CROSS-EXAMINATION ADVOCATES

Provisional appointment of advocate

23A.1 At the first hearing in the court in the case, and in a magistrates' court in particular, there may be occasions on which a defendant has engaged no legal representative, within the meaning of the Criminal Procedure Rules, for the purposes of the case generally, but still intends to do so – for example, where he or she has made an application for legal aid which has yet to be determined. Where the defendant nonetheless has identified a prospective legal representative who has a right of audience in the court; where the court is satisfied that that representative will be willing to cross-examine the relevant witness or witnesses in the interests of the defendant should it transpire that the defendant will not be represented for the purposes of the case generally; and if the court is in a position there and then to make, contingently, the decision required by section 38(3) of the Youth Justice and Criminal Evidence Act 1999 ('the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused'); then the court may appoint that representative under section 38(4) of the 1999 Act contingently, the appointment to come into effect only if, and when, it is established that the defendant will not be represented for the purposes of the case generally.

23A.2 Where such a provisional appointment is made it is essential that the role and status of the representative is clearly established at the earliest possible opportunity. The court's directions under CrimPR 23.2(3) should require the defendant to notify the court officer, by the date set by the court, whether:

(i) the defendant will be represented by a legal representative for the purposes of the case generally, and if so by whom (in which event the court's provisional appointment has no effect);

(ii) the defendant will not be represented for the purposes of the case generally, but the defendant and the legal representative provisionally appointed by the court remain content with that provisional appointment (in which event the court's provisional appointment takes effect); or

(iii) the defendant will not be represented for the purposes of the case generally, but will arrange for a lawyer to cross-examine the relevant witness or witnesses on his or her behalf, giving that lawyer's name and contact details.

If in the event the defendant fails to give notice by the due date then, unless it is apparent that she or he will, in fact, be represented for the purposes of the case generally, the court may decide to confirm the provisional appointment and proceed accordingly.

Supply of case papers

23A.3 For the advocate to fulfil the duty imposed by the appointment, and to achieve a responsible, professional and appropriate treatment both of the defendant and of the witness, it is essential for the advocate to establish

what is in issue. To that end, it is likewise essential for the advocate to have been supplied with the material listed in CrimPR 23.2(7).

23A.4 In the Crown Court, much of this this can be achieved most conveniently by giving the advocate access to the Crown Court Digital Case System. However, material disclosed by the prosecutor to the defendant under section 3 or section 7A of the Criminal Procedure and Investigations Act 1996 is not stored in that system and therefore must be supplied to the advocate either by the defendant or by the prosecutor. In the latter case, the prosecutor reasonably may omit from the copies supplied to the advocate any material that can have no bearing on the cross-examination for which the advocate has been appointed – the medical or social services records of another witness, for example.

23A.5 In a magistrates' court, pending the introduction of comparable electronic arrangements:

i. in some instances the advocate may have received the relevant material at a point at which he or she was acting as the defendant's legal representative subject to a restriction on the purpose or duration of that appointment notified under CrimPR 46.2(5) – for example, pending the outcome of an application for legal aid.

ii. in some instances the defendant may be able to provide spare copies of relevant material. Where that material has been disclosed by the prosecutor under section 3 or section 7A of the Criminal Procedure and Investigations Act 1996 then its supply to the advocate by the defendant is permitted by section 17(2)(a) of the 1996 Act (exception to the prohibition against further disclosure where that further disclosure is 'in connection with the proceedings for whose purposes [the defendant] was given the object or allowed to inspect it').

iii. in some instances the prosecutor may be able to supply the relevant material, or some of it, at no, or minimal, expense by electronic means.

iv. in the event that, unusually, none of those sources of supply is available, then the court's directions under CrimPR 23.2(3) should require the court officer to provide copies from the court's own records, as if the advocate were a party and had applied under CrimPR 5.7.

Obtaining information and observations from the defendant

23A.6 Advocates and courts should keep in mind section 38(5) of the 1999 Act, which provides 'A person so appointed shall not be responsible to the accused.' The advocate therefore cannot and should not take instructions from the defendant, in the usual sense; and to avoid any misapprehension in that respect, either by the defendant or by others, some advocates may prefer to avoid direct oral communication with the defendant before, and even perhaps during, the trial.

23A.7 However, as remarked above at paragraph 23A.3, for the advocate to fulfil the duty imposed by the appointment it is essential for him or her to establish what is in issue; which may require communication with the defendant both before and at the trial as well as a thorough examination of the case papers. CrimPR 23.2(7)(a) in effect requires the advocate to have identified the issues on which the cross-examination of the witness is expected to proceed before the court begins to receive prosecution evidence, and to have taken part in their discussion with the court. To that end, communication with the defendant may be necessary.

Extent of cross-examination advocate's appointment

23A.8 In *Abbas v Crown Prosecution Service* [2015] EWHC 579 (Admin); [2015] 2 Cr.App.R. 11 the Divisional Court observed:

> "The role of a section 38 advocate is, undoubtedly, limited to the proper performance of their duty as a cross examiner of a particular witness. Sections 36 and 38 are all about protecting vulnerable witnesses from cross examination by the accused. Therefore, it should not be thought that an advocate appointed under section 38 has a free ranging remit to conduct the trial on the accused's behalf. Their professional duty and their statutory duty would be to ensure that they are in a position properly to conduct the cross examination. Their duties might include therefore applications to admit bad character of the witness and or applications for disclosure of material relevant to the cross examination. That is as far as one can go. All these matters must be entirely fact specific. The important thing to note is that the section 38 advocate must ensure that s/he performs his/her duties in accordance with the words of the statute.
>
> It means also that their appointment comes to an end, under section 38, at the conclusion of the cross examination, save to the extent that the court otherwise determines. Technically the lawyer no longer has a role in the proceedings thereafter. However, if the lawyer is prepared to stay and assist the defendant on a pro bono basis, I see nothing in the Act and no logical reason why the court should oblige them to leave. The advocate may well prove beneficial to the efficient and fair resolution of the proceedings.
>
> The aim of the legislation as I have said is simply to stop the accused cross examining the witness. It is not to prevent the person appointed to cross examine from playing any other part in the trial."

23A.9 Advocates will be alert to, and courts should keep in mind, the extent of the remuneration available to a cross-examination advocate, in assessing the amount of which the court has only a limited role: see section 19(3) of the Prosecution of Offences Act 1985, which empowers the Lord Chancellor to make regulations authorising payments out of central funds 'to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 and any expenses properly incurred in providing such a person with evidence or other

material in connection with his appointment', and also sections 19(3ZA) and 20(1A)(d) of the 1985 Act and the Costs in Criminal Cases (General) Regulations 1986, as amended.

23A.10 Advocates and courts must be alert, too, to the possibility that were an advocate to agree to represent a defendant generally at trial, for no payment save that to which such regulations entitled him or her, then the statutory condition precedent for the appointment might be removed and the appointment in consequence withdrawn.

7. In CPD IX Appeal 39C: APPEAL NOTICES CONTAINING GROUNDS OF APPEAL replace paragraphs 39C.2 and 39C.3 with:

39C.2 Advocates should not settle grounds unless they consider that they are properly arguable. Grounds should be carefully drafted; the court is not assisted by grounds of appeal which are not properly set out and particularised in accordance with CrimPR 39.3. The grounds must:

i. be concise; and
ii. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing.

Appellants and advocates should keep in mind the powers of the court and the Registrar to return for revision, within a directed period, grounds that do not comply with the rule or with these directions, including grounds that are so prolix or diffuse as to render them incomprehensible. They should keep in mind also the court's powers to refuse permission to appeal on any ground that is so poorly presented as to render it unarguable and thus to exclude it from consideration by the court: see CrimPR 36.14. Should leave to amend the grounds be granted, it is most unlikely that further grounds will be entertained.

39C.3 Where the appellant wants to appeal against conviction, transcripts must be identified in accordance with CrimPR 39.3(1)(c). This includes specifying the date and time of transcripts in the notice of appeal. Accordingly, the date and time of the summing up should be provided, including both parts of a split summing-up. Where relevant, the date and time of additional transcripts (such as rulings or early directions) should be provided. Similarly, any relevant written materials (such as route to verdict) should be identified.

8. In CPD IX Appeal 39F: SKELETON ARGUMENTS, replace paragraphs 39F.1 and 39F.3 with the below:

39F.1 Advocates should always ensure that the court, and any other party as appropriate, has a single document containing all of the points that are to be argued. The appeal notice must comply with the requirements of CrimPR 39.3. In cases of an appeal against conviction, advocates must serve a skeleton argument when the appeal notice does not sufficiently outline

the grounds of the appeal, particularly in cases where a complex or novel point of law has been raised. In an appeal against sentence it may be helpful for an advocate to serve a skeleton argument when a complex issue is raised.

39F.3 Paragraphs XII D.17 to D.23 of these Practice Directions set out the general requirements for skeleton arguments. A skeleton argument, if provided, should contain a numbered list of the points the advocate intends to argue, grouped under each ground of appeal, and stated in no more than one or two sentences. It should be as succinct as possible. Advocates should ensure that the correct Criminal Appeal Office number and the date on which the document was served appear at the beginning of any document and that their names are at the end.

9. In CPD XII General Application D: CITATION OF AUTHORITY, AND PROVISION OF COPIES OF JUDGMENTS TO THE COURT AND SKELETON ARGUMENTS add paragraphs D.17-D.23:

SKELETON ARGUMENTS

D.17 The court may give directions for the preparation of skeleton arguments. Such directions will provide for the time within which skeleton arguments must be served and for the issues which they must address. Such directions may provide for the number of pages, or the number of words, to which a skeleton argument is to be confined. Any such directions displace the following to the extent of any inconsistency. Subject to that, however, a skeleton argument must:

i. not normally exceed 15 pages (excluding front sheets and back sheets) and be concise;
ii. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing;
iii. define the issues;
iv. be set out in numbered paragraphs;
v. be cross-referenced to any relevant document in any bundle prepared for the court;
vi. be self-contained and not incorporate by reference material from previous skeleton arguments;
vii. not include extensive quotations from documents or authorities.

D.18 Where it is necessary to refer to an authority, the skeleton argument must:

i. state the proposition of law the authority demonstrates; and
ii. identify but not quote the parts of the authority that support the proposition.

D.19 If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.

D.20 A chronology of relevant events will be necessary in most cases.

D.21 There are directions at paragraphs I 3C.3 and 3C.4 of these Practice Directions that apply to the service of skeleton arguments in support of, and in opposition to, an application to stay an indictment on the grounds of abuse of process; and directions at paragraphs IX 39F.1 to 39F.3 that apply to the service of skeleton arguments in the Court of Appeal. Where a skeleton argument has been prepared in respect of an application for permission to appeal, the same skeleton argument may be relied upon in the appeal upon notice being given to the court, or a replacement skeleton may be served to the timetable set out in those paragraphs.

D.22 At the hearing the court may refuse to hear argument on a point not included in a skeleton argument served within the prescribed time.

D.23 In *R v James, R v Selby* [2016] EWCA Crim 1639; [2017] Crim.L.R. 228 the Court of Appeal observed (at paragraphs 52 to 54):

> "Legal documents of unnecessary and too often of excessive length offer very little assistance to the court. In *Tombstone Ltd v Raja* [2008] EWCA Civ 1441, [2009] 1 WLR 1143 Mummery LJ said:
> "Practitioners ... are well advised to note the risk of the court's negative reaction to unnecessarily long written submissions. The skeleton argument procedure was introduced to assist the court, as well as the parties, by improving preparations for, and the efficiency of, adversarial oral hearings, which remain central to this court's public role... An unintended and unfortunate side effect of the growth in written advocacy... has been that too many practitioners, at increased cost to their clients and diminishing assistance to the court, burden their opponents and the court with written briefs."
> He might have penned those remarks had he been sitting in these two cases, and many more, in this Division.
> In *Standard Bank PLC v Via Mat International* [2013] EWCA Civ 490, [2013] 2 All ER (Comm) 1222 the excessive length of court documents prompted:
> "It is important that both practitioners and their clients understand that skeleton arguments are not intended to serve as vehicles for extended advocacy and that in general a short, concise skeleton is both more helpful to the court and more likely to be persuasive than a longer document which seeks to develop every point which the advocate would wish to make in oral argument."
> No area of law is exempt from the requirement to produce careful and concise documents: *Tchenquiz v Director of the Serious Fraud Office* [2014] EWCA Civ 1333, [2015] 1 WLR 838, paragraph 10."

10. In CPDXIII Listing Annex 1 GENERAL PRINCIPLES FOR THE DEPLOYMENT OF THE JUDICIARY IN THE MAGISTRATES' COURT add the following paragraphs 5-7 by way of explanation as to the Special Jurisdiction of the Senior District Judge (Chief Magistrate):

5. The Special Jurisdiction of the Senior District Judge (Chief Magistrate) concerns cases which fall into the following categories:

i. cases with a terrorism connection;
ii. cases involving war crimes and crimes against humanity;
iii. matters affecting state security;
iv. cases brought under the Official Secrets Act;
v. offences involving royalty or parliament;
vi. offences involving diplomats;
vii. corruption of public officials;
viii. police officers charged with serious offences;
ix. cases of unusual sensitivity.

6. Where cases fall within the category of the Special Jurisdiction they must be heard by:-

i. the Senior District Judge (or if not available);
ii. the Deputy Senior District Judge (or if not available);
iii. a District Judge approved by the Senior District Judge or his/her deputy for the particular case.

7. Where a doubt may exist as to whether or not a case falls within the Special Jurisdiction, reference should always be made to the Senior District Judge or to the Deputy Senior District Judge for clarification.

Lord Chief Justice
21st March 2018