

Adjournments in the Magistrates Court: the new *R v Picton*?

Alexander Pritchard-Jones

1. On April's Fools Day 2019 the Criminal Practice Direction Number 8 comes into force. This brief updating article highlights the changes as they apply to adjournments in the Magistrates Courts. It seems that adjournments will now be granted even less readily than before, and applications by defendants for adjournments are difficult to get.
2. However, some of the new rules provide the opportunity and justification to make repeated requests of the prosecution to comply with their disclosure obligations, and list matters where this is not forthcoming.
3. Further, 24C.6 states that *the following directions codify and restate procedural principles established in a long line of judgments of the senior courts, to some of which they refer. Therefore **these directions supercede those judgments and it is to these directions that magistrates courts must refer in the first instance.*** [my emphasis]
4. Practice Direction CPD VI Trial 24C: Trial Adjournment in the Magistrates' Court sets of comprehensive framework for prosecution and defence to operate within when (considering) applying for an adjournment.

Changing the PET information

5. If you want to change the information in the Preparation for Effective Trial (PET) form, you need to let the court and the other know early. If you do not, the court *in considering any application to adjourn a trial the court will regard as especially significant any failure in this respect.* **24C.1**

Applications to adjourn on the day of trial *should* be rare

6. This is due to the Practice Direction's expectation that there will be 'early engagement' between the parties. **24C.5.**

The principles

7. The starting point is that the trial should proceed. **24C.7**
8. Parties can appeal such decisions, and so the court can make a robust decision but, somewhat contraindicating, the High Court will only interfere with compelling reasons. **24C.8**
9. The court should consider:
 - a. Dealing justly with the case;
 - b. the need for expedition. Delay may no longer be scandalous, but are *inimical to the interests of justice*.
 - c. the history of the case;
 - d. the public interest in *ensuring that criminal charges are adjudicated upon thoroughly*;
 - e. that more serious charges have a greater public interest in being tried;
 - f. whether a defendant can present their defence fully without the adjournment, and the extent to which the defence will be compromised;
 - g. the consequences on witnesses;
 - h. the impact of an adjournment on other cases, with specific reference to the extent of delay on other cases.

24C.9

The blame game

10. Fault is a relevant factor. The reason for the adjournment request should be examined. **24C.**
11. If the party applying for the adjournment is at fault, that is a factor against granting it. **24C.11**

12. The seriousness of the fault is a relevant factor. A fault is serious if it has been repeated, especially if it has caused a previous adjournment and / or there is no explanation. The more serious the fault, the less likely the adjournment. **24C.12**
13. An early application is important. If a party knows that the other side has not complied with a direction or disclosure obligation and that this will cause the party to need an adjournment, that party should make a prompt application to the court. Without such application, the court may look less favourably on that party making an adjournment application on the day of trial. **C24C.13**
14. Length of adjournment is a factor. **24C.14**
15. A party belated identifying relevant issues is a factor against granting an adjournment. Without an explanation, this is a 'fault.' **24C.15**

Specific circumstances

Absence of the Defendant: Adult

16. The Court will proceed unless contrary to the interests of justice, Magistrates Court Act 1980.
 - a. The court is not obliged to investigate if no reason offered for absence;
 - b. When considering all aspects of the absence, the court will consider the reliability of the information supplied, and the date of supply, and whether the Defendant took any action to avoid being absent. **24C.17**
 - c. If the court does not proceed in absence, it must give reasons.

Absence of the Defendant: Youth

17. No presumption of proceeding in absence and the factors to consider are:
 - a. Trial in absence can lead to an acquittal, and delaying an acquittal is in no one's interests
 - b. The Defendant could ask for the decision to be reopened;

- c. The Defendant has a right of appeal
- d. The age, vulnerability and experience of the Defendant.
- e. Presence or absence of family;
- f. Interests of co-defendant;
- g. Interests of witnesses;
- h. Nature of the evidence, will it fade?
- i. Relisting date.

24C.19

Absence of witness

18. The court must:
- a. Rigourously investigate the steps taken to secure the witness's attendance, reasons given for absence, and likelihood of attendance if the case is adjourned;
 - b. The relevance of the witness, and whether the witness's statement can be agreed or admitted as hearsay, including under section 114(1)(d) of the Criminal Justice Act. This is clearly a suggestion to the courts to consider this more often.
 - c. For Defence witnesses, whether proper notice has been given of the intention to call that witness;
 - d. Whether the witness can be heard later in the trial;
 - e. If there are other witnesses who have attended, whether the trial should be begun and then adjourned part heard.

24C.21

Failure to serve evidence in time

19. The new directions do not want this to be a common reason for an adjournment application. If the Defence have not complained in advance about the lack of evidence, this will be a factor against granting an adjournment. **24C.21**
20. Factors for the court are:
- a. Nature of the evidence,
 - b. Volume and significance of evidence;

c. The time needed to consider it;

21. The court must be satisfied that the evidence is relevant and that the party requesting it is entitled to it; and should consider refusing to admit the evidence, rather than adjourning.

24C.22

Failure to comply with disclosure obligations

22. Disclosure, the new Practice Direction says, is not a trial issue. It should be resolved in advance.
23. If a Defendant complains of a disclosure issue, the court should ask whether there is an application for an adjournment. If there is, the court should consider whether immediate disclosure is possible, and then consider the factors above for Late service of evidence.
24. If the prosecutor has purported to comply with the duty, and there is no defence statement, then no application to adjourn should be entertained. Therefore this is a good reason to serve a defence statement, and also to consider listing matters for disclosure applications.

C24.26

Court time management

25. The Practice Direction also addresses court time management. It says that courts should always begin a trial by reviewing the need for witnesses and the timetable set during pre-trial management. Further, that a court should be *slow to adjourn a trial until it is clear that other trials listed will be effective*.
26. If a time limit for live evidence has been given in the PET form, the court will expect parties to adhere to it.

C24.27

24C.28

Alexander Pritchard-Jones

Law is correct as at 1st April 2019

Whilst every effort has been taken to ensure these notes are correct, they are intended to give a general overview of the law. Readers are respectfully reminded that they are not intended to be a substitute for specific legal advice. No liability is accepted for an error or omission contained herein.