



The Criminal Bar Association Response to the Ministry of Justice's proposal to revise and simplify the rules about commencing proceedings in the Magistrates' Court

Introduction

1. The Ministry of Justice ('MoJ') propose to amend part 7 of the Criminal Procedure Rules; in particular those rules that refer to starting proceedings in the Magistrates' Court.
2. The MoJ published a 26 page 'Invitation to comment' document along with 12 questions.
3. This is the Criminal Bar Association's response to those 12 questions.

Question 1

Is it desirable that the Part 7 rules should correspond to the extent suggested with the Part 14 rules about indictments?

4. We agree that it is desirable that the rules relating to the trial of Informations at the Magistrates' Court broadly correspond to those relating to indictments in the Crown Court. This

answer should be read subject to our comments made in response to particular issues, raised below.

Question 2

Are the suggested requirements for the formulation of a charge consistent with the current practice?

5. We agree that the requirements for the formulation of the charge or summons are consistent with current practice.

Question 3

If so, is that desirable?

6. We agree that it is desirable that the rules continue to prescribe that the offence be described in ordinary language, that it identifies the legislation said to have been transgressed and that it contains sufficient particulars to identify the facts alleged against the Defendant.

Question 4

Should Parts 7 and 14 each contain the same formulation of the rule against duplicity?

7. We note that the new rule 17.2(2) is identical to rule 14.2 (2) (as amended by the Criminal Procedure (Amendment) Rules 2007). This rule was amended following consultation and is to be interpreted in accordance with the case law that has

developed upon the rule against duplicity and, in particular, the exceptions to the rule that case law has recognised. We agree that this case law will continue to apply to this rule.

Question 5

Are the powers conferred on the court by Part 3 of the Criminal Procedure Rules adequate as substitutes for current rule 7.3?

8. It is not felt that Part 3 of the Criminal Procedure Rule, alongside the new rule 7.2, is an adequate substitute for the current rule 7.3. The existing rule specifically deals with how the court should proceed where the information charges more than one offence. This is a very particular set of circumstances and should be therefore considered separately from the general rules of trial management to avoid any possibility of prejudice to the Defendant. It is one of the central tenets of article 6 rights to a fair trial that a defendant has the right "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; and to have adequate time and the facilities for the preparation of his defence". Whilst Part 3 seeks to ensure the fairness of proceedings, one of the most fundamental aspects of that is to know the charge you are facing. Therefore it is important to retain the specific sections contained in the current rule 7.3

Question 6

Is it helpful for the proposed rules to refer explicitly to prescribed forms of information?

9. Yes, it is helpful for the proposed rules to refer to prescribed forms of information as this lead to certainty.

Question 7

Should the Part 7 rules use the expressions 'present an information' and 'serve a written information' in place of 'lay an information'?

10. Part 7 rules should refer to "present" an information and "serve" a written information as opposed to "lay" an information. This is in line with other recent changes to legal language.

Question 8

Should the word 'information' still be used at all?

11. The word "information" in this context is something that is unlikely to be understood by lay people. As the Magistrates' Court is the place most likely to encounter litigants in person, it may be preferable to change the term. However, it is accepted that there is no easy substitute for the phrase, and that due to its wide proliferation within existing legislation, such a change could lead to confusion. The implications of

using the phrase "charge" could be considered, although this too might lead to confusion.

Question 9

Is it helpful to duplicate as suggested the time limit for which section 127 of the Magistrates' Courts Act 1980 provides?

12. Yes. The Criminal Procedure Rules should contain basic information such as that stated in s.127 of the Magistrates' Court Act 1980. The document should refrain (where possible and practicable) from requiring the reader to refer to other documents or legislation when its content can easily be replicated.
13. With the increasing number of lay people representing themselves in the Magistrates' Court due to the change in the legal aid provisions, it is more important than ever that the Criminal Procedure Rules are both easy to understand and comprehensive, rather than a basic framework that refers to many other documents and/or pieces of legislation.

Question 10

Is it helpful to duplicate as suggested the provision for issuing a replacement summons for which section 47 of the Magistrates' Courts Act 1980 provides?

14. Yes, for the same reasons as given above in response to question 9.

Question 11

Would it be helpful to include in Part 2 of the Criminal Procedure Rules the suggested general rule about representatives?

15. Yes, for the same reasons as given above in response to question 9.

Question 12

Is it helpful to relocate as suggested current rules 7.4, 7.5, 7.6 and 7.9?

16. Yes. It would be more sensible for rules 7.4, 7.5, 7.6 and 7.9 to appear in the sections that the MoJ proposes to relocate them to.

17. In each case, they are more relevant to the proposed sections that they be moved to, (summary trial and road traffic penalties) than they are to part 7.

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