



Briefing note: Multi-hander trials

23 September 2020

This briefing note provides an update on multi-hander trials and the Crown Court's ability to hear these safely. It sets out the activity taking place in order to address identified challenges.

Since jury trials resumed in May, they have been taking place under special arrangements to maintain the safety of all participants. These measures include supporting social distancing, installation of plexiglass screening, and appropriate cleaning standards; they have the express support and backing of Public Health England and Public Health Wales.

Over 90% of Crown Courts are now listing jury trials, with more rooms becoming usable each week.

The Jury Trial Working Group, chaired by Mr Justice Edis, established a sub-group in July to look at the issue of 'multi-hander trials' – trials in which there are multiple defendants. This group has been working to identify potential solutions. It has included representatives from the Law Society, Bar Council, Criminal Bar Association, Crown Prosecution Service, HM Prison and Probation Service, Prisoner Escort Custody Service (PECS), Victims and Witness Service, Victims Commissioner and other interested parties.

The group commissioned a data collection exercise, to establish the number of multi-hander cases in the system, and collated court capacity information to assist in listing decisions. This exercise identified that, as of 7 July 2020, there were just over 1,000 multi-hander trial cases in the system involving 3 or more defendants.

A court capability tracker was developed to understand the cell and dock capacity at each Crown Court, and the maximum capacity at each location to hear multi-hander cases. The assessment has shown that there is currently capacity to hear multi-hander trials of up to and including 6 defendants.

There are currently no docks which would support a multi-hander trial of 7 or more defendants. HMCTS regional Heads of Crime have been discussing this issue with their Resident Judges and Presiders, with a view to judges considering how to list multi-hander cases.

Some defendants may decide to offer pleas which are acceptable to the prosecution, and pre-trial hearings to explore whether this is appropriate may continue to be helpful. Legal representatives and prosecutors should proactively continue considering whether this is an appropriate resolution for some or all defendants in these cases, seeking a listing if so.

In some courts, HMCTS have worked with the judiciary to find ways to overcome the cell and dock capacity issues – such as the case with 8 defendants listed for trial in Manchester Crown Square which is due to commence on 2 November. This trial is using space in the well of the court, in addition to the dock. This will be appropriate in some cases, but not all.

Plexiglass screens have been delivered and installed within jury boxes at numerous court sites. With an aggressive roll out schedule, we anticipate that there should shortly be a significant increase in the number of multi-hander trials that can be listed within the existing estate. This is also dependent on the hiring of Portakabin units at court sites to free up court rooms currently used as overspill. Plexiglass is also being considered for installation in Counsel's row, where appropriate.

This means HMCTS is able to administer jury trials in cases where there are 6 or fewer defendants. In a small number of cases, we have been able to put in place measures to list cases involving more than 6 defendants. While the work done so far will go some way to enable the efficient use of court capacity to hear these cases – particularly if they are listed cross-regionally – we have established that further measures will be needed to ensure that all multi-hander cases can be listed in a timely way.

There are just over 130 multi-hander trials of 7 or more defendants in the system. Currently, these cannot be listed unless one or more of the options below is applied.

In each case, the decision is a matter for the relevant trial judge.

Severance

Dividing larger multi-handed trials into smaller cohorts is already an existing practice, used to ensure trials remain manageable and focus on the relevant areas in dispute.

This solution does impact on court time, which may delay other cases, and may require witnesses to give their evidence more than once (although the roll out nationally of section 28 could assist to mitigate this to some extent).

A greater use of severance for the larger trials will provide the ability for these cases to be heard. The listing of trials of 7 defendants or more would be made easier if cross-regional listing can be considered to make the best use of existing court house capacity.

Utilising the multi-courtroom model for hearing trials to accommodate the defendants in separate docks

This approach would support the physical attendance of all the defendants within the court houses assigned for their trial. They would be able to view the proceedings in the main courtroom (housing the judge and the jury) via video link from a different court room dock; they could be escorted to that court when required to give evidence.

This option has the impact of reducing the number of available court rooms for use for other hearings. It is already being applied in small number of cases.

Defendants to appear by video link for trial from the prison and to be produced in court for jury empanelment and when giving evidence

There is some scope for an increased use of video links from prison to court for trial purposes. The use of video links at prisons – more specifically, those prisons that can hold category A prisoners and which have greater video link capability – may enable defendants to appear via video link for the duration of the trial.

Physical attendance will be required for the giving of evidence and, at the discretion of the judge, at other key points such as jury empanelment. HMPPS have provided a list of the courts local to the relevant prisons where this approach could take place.

The option to introduce creative arrangements for the production of prisoners to give their evidence within a court room, but where the remainder of the trial is carried out via video link, has been shared with the Heads of Crime and Delivery Directors to discuss locally with the judiciary. However, opportunities for this will be limited by the availability of prison video link capacity, which is primarily in use for other court hearings and professional visit business.

Nevertheless, case arrangements where this recently successfully took place for trial were circulated to the Judiciary by Mr Justice Edis in August.

Use of Personal Protective Equipment (PPE) by Prison Escort and Custody Service (PECS) officers

The use of PPE within the dock supports the physical attendance of the defendants in court if social distancing is not possible, and where the judge has provided authorisation.

PECS have completed assessments of a large number of docks and confirmed that they have the appropriate PPE equipment for use by their contractors. However, while they can ensure that PECS officers wear PPE, neither they, nor the Judge, are able to compel a prisoner to do the same. This means each case must be risk assessed on an individual basis.

Judges are now able to explore the use of PPE in the docks with PECS.

Installation of toughened glass screens in the docks to separate defendants

As an alternative, or addition, to individuals wearing PPE, installation of toughened glass screens within the dock area would also support the physical attendance of multiple defendants.

A bespoke design would be required for each court, and the strict criteria for dock glass would also need to be maintained. This would take time to implement and would be expensive to roll out.

However, HMCTS and PECS are exploring this option to consider its feasibility, including potential costs and timings: a prototype is now being installed in Portsmouth Crown Court, which should be completed by the end of September.

It should be noted that, even with the addition of this measure, it is only likely to increase the capacity by one defendant per trial. There are also significant safety concerns with this option.

Reverse cohort units (RCU)

Whilst HMPPS have adopted the utilisation of RCU and 'Regime Groups' to keep the same prisoners together, reducing the risk of contamination, the 2m social distancing principle will still be maintained. In exceptional circumstances co-defendants who share a cell, classified as a 'household', may be able to remain in close proximity within the custody suite and dock.

There are, however, frequently good reasons for not locating co-defendants together in one place; the extent to which this option could be employed would be a matter for HMPPS and further clarification from HMPPS in relation to other risk factors would need to be pre-determined prior to the hearing.

The creation of a Nightingale secure court(s) or other building modifications to accommodate 7+ multi-hander trials

We are currently exploring a number of options to create capacity for multi-hander trials including 7 or more defendants (where a dock which can accommodate them is required). We assess that the quickest method will be to undertake minor building modifications in the existing estate (for example, knocking down walls to create larger court rooms).

The HMCTS Alternative Courts and Tribunals Capacity (ACTC) team is currently exploring these options. In addition, we are exploring the introduction of secure cells in the Nightingale court in Swansea, which would enable Swansea to accommodate at least 10 defendants.

The ability to support large numbers of defendants within the docks also needs to be supported by the ability of the custody suites to safely hold the appropriate number of defendants – not only for the multi handed trial, but also for the other cases listed at the site, to avoid the need to reduce listing of other custodial cases.