CBA Response to Consultation on Criminal Courts Listing

Date: 16th December 2025

The CBA represents the views and interests of practising members of the criminal bar. Our response to this Consultation has been prepared by the Officers of the CBA based on our experience of the issues frequently raised with us by CBA members.

Crown Court

1. **Please identify the main problems that your organisation encounters which are caused by the way in which cases are listed in the Crown Court.**

    a. We would prefer to start not with a negative comment, but with a positive.

    Our experience is that in very many areas of the country listing benefits from excellent engagement between listing officers and barristers' clerks. The professionalism of those who perform those roles should not be underestimated.

    Listing officers and clerks are the individuals who hold the information which is often capable of finding the best and most efficient solution to the listing of a case.

    The listing officers know their judges well, they know the cases which

they have to manage and they know where there may be some flexibility to ensure a case is listed at its earliest realistic date. Barristers' clerks are in constant liaison with instructing solicitors and with CPS, they have established working relationships and often are the most effective point of contact for solving problems. It is the clerks who know that if barrister X is unable to complete the case, barrister Y or barrister Z likely to become available and to be an acceptable alternative for the instructing solicitor.

Put simply, we believe that listing is done best when the listing officers and barristers' clerks are fully able to participate in discussions. That means that identifying potential trial dates prior to PTPH is hugely advantageous. We should always respect the professionalism of those whose job it is to deal with these issues.

We would encourage measures to promote sharing of best practice amongst listing officers around the country.

b. The following are the commonly encountered issues which cause difficulties for members of the criminal bar.

    i. Failing to give sufficient (or sometimes any) weight to instructed counsel's availability when fixing a trial date at PTPH.

    This issue is particularly acute in CTL cases.

    There has been considerable emphasis in recent years on early engagement and the 'front loading' of preparation work. In more complex cases, there is an unfairness to criminal barristers that the many hours of work which they have put into a case prior to PTPH will be wasted effort if the trial is listed on a date on which they are unavailable.

    However, there are also more important systemic problems with this approach. First, by removing all incentive from

busy practitioners to carry out this work it is inevitable that the early engagement will be less effective than it might otherwise be. It is not just a general statement that barristers are deterred from 'going the extra mile': almost every barrister will have had the experience of doing so, only to find that their efforts are wasted. Second, it undermines the confidence of defendants in the system when the barrister whom they have met turns round and says they cannot do the case anyway.

ii. 'Overlisting' of serious cases.

The topic of 'at risk' cases is discussed below. Our view is that there is merit in the 'ambitious' listing of non-complex cases. However, a problem frequently encountered is that complex cases and cases with vulnerable witnesses and/or defendants are often removed from the list at short notice due to lack of a judge or courtroom.

As discussed below, the failure here is to identify the right cases to go into a warned list or to be listed as a backer trial.

iii. Inconsistent Judicial approach to the use of email.

There are significant differences of approach not only from court centre to court centre but also between judges at the same court centre as to the use of email for simple submissions.

Some judges are willing to determine straightforward issues on the basis of written communications by email. This is an efficient and effective means of working which avoids unnecessary cost and use of court time.

Other judges are unwilling to determine applications on that basis, or even refuse to receive representations by

email.

This inconsistency of approach leads to misunderstandings between bar and bench, and leads to significant inefficiencies. In both civil cases and Tribunals, there are recognised procedures for determining applications on the basis of written representations only. In many jurisdictions, Judges routinely decide applications on the basis of emails or letters alone. Even in the Crown Court, there are some forms of application (eg. special measures, witness summons) where the default position is to decide the application on the papers.

Rule 3.5(2) Crim PR already provides that the Court may receive applications, notices, representations and information by letter, by live link, by email or by any other means of electronic communication. It also provides that the Court may give directions with or without a hearing. The Rules allow for this approach, but a national protocol is required to encourage its use in practice.

iv. Failure to see the bigger picture.

For understandable reasons, the focus of an individual Crown Court judge is often on their court and the individual case which is listed before them. Some Judges will express frustration that a hearing has taken place without the instructed advocate being present, or (as mentioned below) counsel may request to appear by video link when the Judge would prefer that they appear in person. This can lead to unrealistic demands being made for the personal attendance of the instructed advocate.

We respectfully say that it is a misnomer for Judges to refer to 'the convenience of Counsel' when considering the

listing of a case. Almost invariably, the difficulty is because of another case of equal importance listed before another Judge in another court centre who is equally concerned about the effective listing of cases before them.

The barrister has not chosen to be in that position of having a conflict in their diary. Our point is that not all Judges recognise that this is not about "Counsel's" convenience, but the interests of another equally important case elsewhere. It is about seeing the bigger picture for the CJS.

The problem would be less acute if there was a bigger pool of suitably experienced advocates willing to undertake such work at publicly-funded rates, but there is not and that is a debate for a different forum.

v. In some areas, difficulties in obtaining a response from listing officers.

We began this note with the positive comment about the effective working relationship between listing officers and barristers' clerks. Sadly, there are some court centres where difficulties are sometimes experienced in obtaining a prompt response from listing officers. We would encourage measures to ensure best practice is followed around the country.

vi. Objections to use of CVP by witnesses and by counsel.

We believe that the overwhelming majority of Judges now accept that CVP is an acceptable solution to many listing problems. However, there are still some Judges who are reluctant to authorise appearance by CVP either for witnesses or for counsel.

This is also an issue on which 'local protocols' have been

adopted, which are sometimes inconsistent and a cause of confusion. This should be the subject of guidelines at a national level.

Video conferencing is now a standard tool in all aspects of professional life, from medical consultations through business meetings even to parliamentary hearings. It goes without saying that in person meetings and hearings are very often preferable, but that involves both cost and delay.

Most (but not all) Judges are alert to these issues and willing to be flexible. We mention this issue in the context of this consultation, but we are also aware that these are matters which are being considered by the Crown Court Improvement Group (CCIG) forum on video technology led by Yip LJ and in Part 2 of Sir Brian Leveson's Review of the Crown Courts.

2. **What are the main improvements you would like to see?**

Please see the comments made above. The issues which flow from this are:

a. Early engagement (pre-PTPH) between listing officers and barristers' clerks to identify potential dates for trial.

   A listing protocol would promote this.

b. Greater respect for the work done by listing officers and barristers' clerks. Listing more often tends to go wrong when barristers and/or judges interfere too much with the process.

   This is an issue for judicial trainers / communication with resident judges.

c. Better recognition of the importance of Counsel's competing commitments. Whilst a Judge's frustration at an individual level is

understandable, this can undermine effective listing at a systemic level.

This is an issue for judicial trainers / communication with resident judges.

d. Careful identification of the cases which are suitable for listing as floaters or backers.

Clear guidelines are required.

e. Caution concerning the overlisting of serious cases, including rape and serious sexual offences.

Clear guidelines are required.

f. Greater acceptance of the use of CVP by witnesses and by Counsel.

Clear guidelines are required.

3. **If listing "at risk" enables cases to be dealt with sooner than giving all cases a fixed date, would you prefer the chance of a much earlier trial date to the greater certainty of a fixture?**

In principle, the CBA **strongly support** the use of "at risk" listing to promote the efficient listing of 'volume' criminal cases.
We believe that the issue is the **early identification of suitable cases** to be listed on this basis.
National guidelines are required.

Discussion

The CBA are deeply concerned about the current backlog of cases in the Crown Court, which in the Q2 2025 figures stood just short of 80,000 cases and which is likely to have increased in the Q3 figures.
Strongly robust listing <u>is</u> an important part of the solution to the earliest possible resolution of cases in the existing backlog. In making that recommendation, we are conscious that this means that in many cases

the early preparation work of instructed counsel may prove to have been wasted.

The real issue which arises is the proper identification of the cases which are suitable to be listed on this basis. This should be formally considered at PTPH.

Clear guidelines are required which explicitly identify the factors which should be taken into account. These include the following:

- Length of trial.

  Listing on this basis is appropriate only for trials which are expected to last no more than 3 to 4 days.
- Whether a Section 28 cross-examination has taken place.

  It is highly desirable (although not necessarily mandatory) for the trial to be conducted by the same counsel as conducted the s.28 hearing.
- Complexity of the case.

  Even a relatively short case may involve issues of complexity meaning that the right advocate is required to conduct the case, for example due to legal issues or expert evidence.
- Age and/or vulnerability of the key participants.

  Cases involving vulnerable defendants, vulnerable complainants or other vulnerable witnesses may not be suitable for listing on this basis.
- Disability and/or special needs.

  This is potentially an aspect of vulnerability: some participants in the criminal trial process (defendants/complaints/witnesses) have disabilities and/or special needs which mean that they require the support of others when attending court. This may range from an intermediary through to a professional carer, a family member or a supportive friend. Those supportive roles are important and the interests of those individuals should also be taken into account.

- Cases where difficulties over the availability of witnesses (in particular, expert witnesses) are likely to arise.
  It is not fair or reasonable to expect witnesses to 'block out' a trial window in their diary to the exclusion of other personal or professional commitments.
- The views of the key parties (defendant and any complainant).
- The views of instructed advocates.

We accept that no single party should have a total right of veto over the listing of a trial as an 'at risk' case. In our view, this should be a matter for judicial discretion but attaching significant weight to each of the factors referred to above.

4. **From your experience, what answer to you consider (a) witnesses and (b) defendants would give to question 3?**

   We do not believe that there is a single answer to this question, hence our recommendation that the views of key participants should be taken into account in deciding at PTPH whether a case is suitable for listing on this basis.

   There are both complainants and defendants who would prefer to have 'their' case resolved at the earliest opportunity, even if that means an uncertain listing dates. There are others who may view the prospect of the trial with considerable fear and who would prefer to have a fixed date so that they can be mentally prepared.

   In short, there is no 'one size fits all' answer to this question. The views of participants should carry significant weight, but this should not amount to a right of veto to a case which is listed on this basis.

5. **Please provide any evidence that you have which is relevant to questions 3 and 4.**

These views are based on our collective experience of many decades of working within the Crown Court.

6. **If the opportunity for a case to be heard on or close to its listed date required the case to be heard at another court centre within a regional cluster of courts, would you be prepared to travel for that purpose?**

The principle of 'cross-border' listing.

We support this initiative in principle, but it is suitable only for the right cohort of cases, and possibly not appropriate in all areas of England and Wales.

Consideration should also be given to whether this should be a permanent provision, or targeted at the backlog and subject to a 'sunset clause'.

Again, this is an issue which should be considered at PTPH. It would be entirely feasible for there to be a *"Suitable for listing at another Court Centre"* designation for appropriate cases.

The factors which should be taken into account include the following:

- Age and/or vulnerability of key participants.

- Disability and/or special needs.

- Caring responsibilities, including the responsibilities of instructed advocates.

  A common issue is the need to pick up / drop off children at school, which is an obvious problem if that is more than 1 hour from court.

  It is important to remember that proximity should be measured from the participant's home, not from the court centre which has initial

conduct of the case. For example, a defendant in Skegness already faces a journey of about an hour when their case is listed in Lincoln or Grimsby, but it turns into two hours if they have to travel to Sheffield or Nottingham.

There are other instances where this is not an issue at all. For example, there are very large towns between Liverpool and Manchester (Widnes, St Helens and Wigan) where it might make little practical difference for defendants and witnesses if a trial was listed in Manchester as opposed to Liverpool.

- Cost and availability of travel.

  Not all participants have access to a car, or even the means to pay for public transport.

Regional Clusters

We agree that appropriate regional clusters should be identified for the purposes of this proposal. These allocations should take into account the availability of public transport. For example, there might be significant difficulties in moving cases into Wales, where public transport links are poor (neither Mold nor Caernarfon have mainline railway stations).

7. **From your experience, what answer to you consider (a) witnesses and (b) defendants would give to question 6?**

   Again, the identification of suitable cases must be on a case-by-case basis, taking into account the views of participants.

8. **Please provide any evidence that you have which is relevant to questions 6 and 7.**

Please see our answer at Para 5 above.

9. **Do you consider that you have a good channel of communication with the Crown Courts you deal with? If not, what can you do to improve that, and what do you think other agencies can do? If your court is part of the case-coordinator pilot, what has been their impact?**

Nothing additional to add.

10. **A significant difficulty in listing cases is caused by the low level of early guilty pleas, i.e. at or soon after PTPH. What can you do to improve that, and what do you think other agencies can do?**

The CBA supports:

- Increased and/or more flexible credit for guilty pleas.
- More proactive use of 'Goodyear' indications on sentence, including indications initiated by the Court.
- Greater use of non-custodial sentences, as suggested in the Gaulke report and in the Sentencing Bill 2025.
- Robust and pragmatic decision making by the CPS and police, including an early and proactive approach to indicating the prosecution's 'bottom line' to resolve a case. This should be echoed by robust and realistic advice being given by the defence.
- Triaging of cases listed for trial. Judges (including retired judges and Recorders) should be allocated to triage the cases which have been listed for trial in each court centre, including calling cases in for an in-person hearing to see whether a resolution is appropriate.

A theme in most if not all or the proposals above is that prosecuting cases to the maximum degree supported by the evidence has an impact on the

Criminal Justice System as a whole. Whilst a conviction for a more serious offence (eg. s. 20 GBH) may be entirely supported by the evidence, the decision whether to accept a plea to a lesser alternative (eg. s. 47 ABH or affray) should take into account the difficulties in the system as a whole. Decision making should take into account the impact of the backlog on victims as a whole, not just the views and interests of the victim in an individual case, important though those are.

11. **Is there anything that the court listing system can do to promote early pleas in those cases where defendants plead guilty at a late stage?**

Please see comments above.

12. **Please let us have your views, in as much detail as you wish, about the Better Case Management Revival Handbook, published January 2023 and available on the Guidance Page at https://www.judiciary.uk/wp-content/uploads/2024/04/BCM-Revival-Handbook.pdf.**

We welcome the guidance in the BCM Revival Handbook, but regret that it has not had the recognition and support which it deserves.

Regrettably, there has only been limited training and education outside the judiciary. It is rarely mentioned in Court proceedings.

We anticipate that the Handbook is likely to be reviewed in the light of the recommendations of Sir Brian Leveson's reviews. There has already been some early indication of the scope of his recommendations in Part 2 of the Review. No doubt there will be a renewed opportunity for training and education once those proposals are in place.

13. **In particular, please let us have your views, in as much detail as you like, on Annex 1, Remote Attendance Guidance.**

For the reasons set out above, the CBA's view is that there should be a common set of guidelines for the use of video technology to promote court attendance. We would positively support the adoption of a national Practice Direction. The proliferation of local protocols has led to confusion, misunderstandings between bar and bench and inconsistency of service between different Court centres.

Again, we anticipate that there will be further guidance as a result of the work of the CCIG group on video technology and from Sir Brian Leveson's 'Part 2' recommendations.

14. **Do you have any views about what digital listing tools the Crown Court might employ, and how those tools might improve your dealings with the Crown Court?**

This is outside our knowledge.

Magistrates' Court

15. **Do you agree that Magistrates' Court listing is done in a fairly standard way across the jurisdiction? If not, please provide evidence of significant variations.**

16. **Please answer questions 1-8 and 13 above in relation to the Magistrates' Court**.

17. **Please provide up to date feedback about the digital systems in use in the Magistrates' Court.**

Other bodies are better placed to comment on listing in the Magistrates' Courts.