In the Crown Court at Woolwich

R-v- Tesfa Young-Williams

T20190789 and T20200442

Ruling by HHJ Raynor dated 8th September 2020 refusing an extension of the custody time limit on Counts 4-7 of the trial indictment

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Headline issues and short form ruling

1. The relevant issues and responses are:

   a. <u>New legislation</u>

   What is the immediate impact of the new legislation expected to come into force on 28th September 2020, which will, for a 9-month period, extend the custody time limit from 182 days to 238 days? The extension will apply to new CTLs that begin during the temporary 9-month period for which time the amended Regulations will apply (it will not be applied retrospectively so will not affect prisoners currently on remand whose case is subject to a CTL that began before the amended Regulations came into force).

   Mr Young-Williams has been remanded in custody for 321 days. He is innocent until proven guilty. That is at the forefront of my mind. He has been held for 139 days beyond the CTL which applies to him and 83 days beyond the new CTL which would apply to a defendant remanded into custody under the new proposed law.

   b. <u>Article 6(1) and 5(3) of The European Convention on Human Rights</u>

   Has the State, failed to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1) to ensure trials within a reasonable time of unconvicted defendants remanded into custody ,whether the appropriate test is “regardless of cost” or even a lesser requirement of “ high cost” or “ cost proportionate to the exceptional situation “ ? Yes

   c. <u>Exceptional situation</u>

   Does the current coronavirus situation still amount to an exceptional situation? Yes

   d. <u>Exceptional and routine cases</u>

   Does the coronavirus itself turn every routine case into exceptional case? No

   e. <u>Good and sufficient cause</u>

      i. Does the evidence now available to me indicate a lack of funding by The Ministry of Justice (MoJ) /Her Majesty’s Court Service (HMCTS)? Yes

ii. Do the new proposed measures announced in the press release dated 6th September 2020 and in The Criminal Courts Recovery Plan (CCRP) [1] have a realistic prospect of success in the sense that they will significantly reduce the backlog of outstanding trials for those in custody? No

d. Balance

Does the balance favour an extension? No

e. Due diligence

Has the prosecution acted with all due diligence? No

f. Bail

Does this mean that the defendant is released on bail today? No, because he remains remanded in custody on the counts transferred from Basildon Crown Court (Counts 1-3) until 6th October 2020. I reserve the hearing of that application to myself. The defendant is now on technical bail on the Woolwich counts.

Potential trial date

g. When might the defendant's trial take place at Woolwich Crown Court? There is a possibility, by November 2019, that Woolwich Crown Court might have the capacity to undertake 4-6 trials per week, if plexi-glass is installed and up-and-running by then. Furthermore, there is a possibility that this defendant's case might have been heard then. The situation as to trial availability changes by the week.

h. Even if a court had been available to hear the trial in short order this would not have affected my decision.

Case Background and History

2. The defendant is a 19-year-old male facing an indictment containing the following counts (which are on a joined indictment of cases at Woolwich and Basildon Crown Courts at B2 on the Woolwich Crown Court digital case system (DCS) case T20200442):

Basildon Counts

Count 1- On 5th March 2018 being concerned in the supply of a controlled drug (cocaine) to another contrary to section 4(3)(b) of the Misuse of Drugs Act 1971

Count 2 - On 5th March 2018 being concerned in the supply of a controlled drug (heroin) to another contrary to section 4(3)(b) of the Misuse of Drugs Act 1971

Count 3 -On 5th March 2018, at Southend-on-Sea, having an offensive weapon (an extendable baton) contrary to section 1(1) of the Prevention of Crime Act 1953.

Woolwich Counts

Count 4 -On 21st October 2019, possession Cocaine Hydrochloride (namely 843.9grams) with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971.

[1] COVID-19: Update on the HMCTS response for criminal courts in England & Wales-September 2020

Criminal Courts Recovery Plan

Count 5 --On 21st October 2019, possession of diamorphine (namely 5.44 grams) with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971.

Count 6 - On 21st October 2019, possession of cannabis with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971.

Count 7 – On 21st October 2019 possession of criminal property, namely £2180 in cash, contrary to section 329(1)(c) of the Proceeds of Crime Act 2002.

3. The defendant was arrested on 21st October 2019. He was charged on 22nd October 2019 and held for court. He appeared at Bromley Magistrates Court on 23rd October 2019 and then remanded into custody. The relevant form recording the decision at A1 on the digital case system records: "Bail exceptions: likely to offend, likely to abscond, offence while on bail. Reasons for applying nature and seriousness of offence, offended on bail."

4. At a plea and trial preparation hearing before me on 20th November 2019 the defendant was arraigned and pleaded not guilty to the Woolwich counts. At that hearing defence counsel indicated that the defence would be relying on section 45 of The Modern-Day Slavery Act. I was also informed that a referral had been made to The National Referral Mechanism (NRM). Furthermore, I was informed that the defendant also had a case listed at Basildon Crown Court in January 2020 on an indictment alleging possession of Class A drugs with intent to supply, but no further details were provided. The Woolwich counts were listed for a trial on 20th April 2020 in the warned list (with a 3-day time estimate based on the Woolwich matter alone) and Stage dates were set.

5. On 5th February 2020, the case came before HHJ Miller, who noted that the NRM decision was still awaited, and extended the stage dates.

6. On 16th April 2020 HHJ Downing extended the CTL by agreement to 22nd June 2020 (the first extension of the CTL).

7. The trial was not brought on for 20th April 2020 and that trial date was vacated.

8. The case was listed on 15th June 2020, but the DCS entry notes that there was no cell capacity and the case was adjourned to 17th June 2020 for the defendant to be produced for the custody time limit to be reviewed.

9. On 17th June 2020, at a mention hearing before HHJ Miller, the defendant was produced to court from custody. The widely shared note of that hearing (on DCS) states: "This case cannot be tried at Woolwich imminently because of Covid-19 and will have to be further adjourned for about 4 weeks to then fix a trial date. D also has a similar matter (county lines street dealing) and runs the same defence at Basildon CC (for trial in October). P counsel states that the CPS were not seeking to join the two cases. I observed that the joinder of the two cases would be a proper application, that it would enable one court to consider the overall picture and D's defence and if convicted, one judge appraised of both matters could sentence. P counsel will give further advice to CPS." The judge adjourned the case to 16th July 2020 for mention regarding joinder and to fix a trial date. He also gave directions regarding the potential joinder of the Woolwich and Basildon cases. He ordered: (1) that the prosecution must, by 1st July 2020, upload to DCS a written joinder application or letter confirming that it is not seeking joinder; and (2) by 15th July 2020, if joinder is sought and opposed by defence, defence to upload to DCS a skeleton severance argument.

10. At this hearing, the CTLs were extended by agreement to 20th July (the second CTL extension). HHJ Miller found "good and sufficient cause due to the pandemic, that the CPS has demonstrated at Q2 that it has acted with all due diligence and expedition and in my discretion, CTLs should be extended. Bail refused for same reasons as before: FFO based on N&S, similar matters at Basildon, strength of evidence and record."

11. At a hearing before HHJ Shorrock on 16th July 2020 the CTL was extended until 10th September 2020 (the third CTL extension). The prosecution application to join the Woolwich and Basildon indictments was adjourned until 23rd July 2020. The defence was given an extension of time to 22nd July 2020 to upload any skeleton arguments on joinder (initially ordered by 15th July 2020). The judge's note on DCS records; "Not yet possible to fix a trial date /determine length of proceedings"

12. On 10th June 2020 at Basildon Crown Court at a hearing before HHJ Hurst the CTLs in the Basildon case were extended to Tuesday 6th October 2020 and the case was ordered to be mentioned on 24th August 2020 with a view to fixing a trial date. The entry on DCS reads "the defence have received NRM referral conclusions that are supportive of D and indicate modern day slavery; R have considered and reviewed the position and nonetheless will proceed to trial in d's case. He has another serious drug matter in London that will be the subject of an application to join the Basildon matter. R will inform defence today in writing as to its reasons for proceeding."

13. On 23rd July 2020, the Woolwich case was listed before me for joinder and review. My note of DCS reads:

    "D in custody (CTL has been extended - now 10 Sept 2020) and excused for today.

    1. D has a Basildon CC case (T20190308) for PWITS of cocaine and heroin i.e. the same charges as faced on his current Woolwich indictment. Pros apply for joinder and defence does not object. I join the two indictments (no continuing Co-D on the Basildon case) but conditional on the Resident judges at both courts agreeing to this.

    2. I am troubled by the NRM history on the Basildon case as one man (Malachi Freeman) was not charged due to NRM referral and another man (Gary Chamberlain) was charged, indicted and arraigned and then not proceeded with due to an NRM referral, leaving D as the younger/youngest on trial. By 27 Aug 2020 Pros to upload onto DCS all information in its possession relating to NRM history for Malachi Freeman and Gary Chamberlain (on Basildon) and Young-Williams (on Woolwich case).

    4. By 17th September 2020 defence to upload a skeleton argument on NRM abuse of process/other legal issues. I take counsel to recent CA authorities.

    5. By 7th October 2020 pros to upload written response.

    6.Case to be listed for abuse of process application during w.c. 12th October 2020 and reserved to HHJ Raynor. TE 1 day. D is to be produced to court. Def counsel invited to attend court in person and indicates he will do so. Pros by SfB.

    NB Pros will need to apply to extend CTLs before 10 Sept 2020.RIC. "

    [From recollection I was not informed of the CTL on the Basildon case.]

14. On 25th August 2020 staff at Woolwich Crown Court created a separate file for the Basildon case and linked it to the existing Woolwich Crown Court case.

15. The case was listed before me on 3rd September 2020, for the hearing of the prosecution's fourth application to extend the custody time limit. The application, which was uploaded on 25th August 2020, is on DCS at Q5. At that hearing the prosecution was represented by Mr. Vine and the prosecution by Mr. Lynch. I adjourned the hearing to Tuesday 8th September 2020 and then sent emails to counsel attaching (a) rulings at first instance on CTL applications (b) The case of McKenzie (c) A memorandum from Her Majesty's Court Service (HMCTS) to The Senior Presiding Judge (SPJ) and others, dated 24th August 2020 (c) A plexi-glass screens chart from HMCTS – see below and (d) A decision regarding the withdrawal of The Coronavirus Protocol and (e) case-law.

The Coronavirus Protocol is now out of date and is withdrawn

16. The Protocol ceases to have effect from 3rd September 2020. On 2nd September 2020, The President of the Queen's Bench Division and The Senior Presiding Judge issued the following direction.

> **"Direction from the President of the Queen's Bench Division and the Senior Presiding Judge**
>
> Withdrawal of Custody Time Limits Protocol of 9 April 2020
>
> The Custody Time Limits (CTL) protocol was introduced on 9 April 2020 to streamline practice and procedure in dealing with applications to extend CTLs at a time when it was not possible to conduct any jury trials in the Crown Court due to COVID-19. In the five months since it was introduced, the situation in the Crown Court has changed significantly. Jury trials restarted in May and are now taking place in increasing numbers. 102 courtrooms can now accommodate jury trials and it is expected that many more will be available for trials in the coming months. Resident Judges have been provided a memorandum by HMCTS setting out details of arrangements that are in place and will be in place to increase the number of trials coming before the court. The memorandum is publicly available.
>
> In the Magistrates' Courts the number of trials is increasing by the week.
>
> The Protocol is now out of date and has served its purpose. It is being withdrawn and will cease to have effect on 3 September 2020. The Protocol reflected much that has become good practice.
>
> Arrangements that have made the listing of CTL extension applications straightforward and convenient will, no doubt, continue, wherever practical. The Protocol explained that it "contains rules of practice only and the relevant law is unaffected." It did not seek to constrain the independent judicial decision necessary in all extension applications. Decisions will continue to be made on the merits of each case with the restricted availability of courts an important factor."

Why was the Coronavirus Protocol issued on 27th March 2020 amended on 7th April 2020? See below

17. Here I set out the defence submissions, extracted from their skeleton argument:

> 30. On 27 March 2020 the first iteration of the Coronavirus Crisis Protocol for the Effective Handling of Custody Time Limit Cases in the Magistrates and the Crown Court (the "Protocol"), signed by the President of the Queen's Bench Division, the Chief Executive and the Deputy Chief Executive of HMCTS, and the DPP was published.
>
> 31. Although this Protocol has now been withdrawn its contents, and in particular Paragraph 7, are relevant to the extent that they reveal how the existing CTL legislation was arguably unsuitable to deal with the situation created by the health crisis and how, when drafted, it was not envisaged that its rationale would be applied for many months ahead.
>
> It is impossible to determine without hearing evidence on the matter whether the amendment to Paragraph 7 from the extension of a CTL to a date not for trial to a date for either a trial or further mention was made because it had been recognised that a blanket direction that

extensions were to be indefinite and with no actual trial date in sight might be open to judicial review, or because in the intervening two weeks the judiciary and executive had decided, for reasons which are unknown, that trials would resume soon.

18. Without evidence from an HMCTS senior manager I cannot answer this point. The submissions shows the need , as pointed out in *McAuley* that " that evidence from the senior management of HMCTS must be provided well in advance of the hearing to the defendant and adduced by the CPS to the court " .

19. I must have regard to section 22(3) Prosecution of Offences Act 1985. The defence submit that this provision became " strained to breaking point when the old protocol was used , such that all contested cases in the Crown Court were adjourned to a date in the future, with no realistic prospect of a trial date being given" . It is right that some courts have been giving "soft" trial dates for defendants in custody into late 2021. That approach has not, to my knowledge, been adopted at Woolwich Crown Court. I do not know of any proposals to introduce legislation to amend that provision. That is for others to decide. I note the submission, but do not go further.

Other Rulings

20. I have had the advantage of reading and considering the following rulings:

    a. R. (on the application of McKenzie) v. Leeds Crown Court [2020] EWHC 1867 (Admin).
    b. R-v-Mohamed Subhani and Mohammed Ali Subhani- First instance decision of HHJ Edmunds QC, Resident Judge at Isleworth Crown Court, dated 22nd July 2020.
    c. R –v- Louis Navarre- First instance decision of HHJ Christine Laing QC, Resident Judge at Lewes Crown Court, dated 6th August 2020.
    d. R-v- Constable and Others - First instance decision of HHJ Leonard QC, sitting at The Central Criminal Court, dated 16th August 2020.
    e. R-v- Faustas Demidovas- First instance decision of HHJ Heathcote-Williams QC at Woolwich Crown Court, dated 20th August 2020.
    f. R-v- Zafira- First instance decision of HHJ Melbourne Inman QC, Resident Judge at and Recorder of Birmingham, dated 21st August 2020.

21. I understand that , earlier this month , the Resident Judge at Bolton Crown Court , on a conspiracy to possess a firearm with intent to endanger life case, declined to extend custody time limits on the basis that the failure of the state adequately to resource the criminal justice system / the lack of available courtrooms to hear jury trials for defendants in custody and the wholly inadequate steps being taken to resolve the situation meant that good and sufficient cause for extending CTLs had not been established. I have not yet seen a copy of that ruling.

22. McKenzie is not on point and does not directly address the issues of : (a) whether there is a lack of money provided by Parliament and (b) whether the proposed steps to alleviate the situation appear to have a prospect of success.

23. Apparently, my earlier ruling in R-v-Graham is not to be reviewed by a superior court.

The Law

24. In Crown Court at Winchester in Reg. v. Blair and Bryant; Reg. v. Taylor (quoted and approved in Manchester Crown Court ex parte McDonald at 848) the purpose behind the custody time limits provisions was described thus:

> "These are provisions expressly designed to protect the liberty of the citizen, assumed at the present stage not to be guilty. Of course the decision to place him in custody involves a balance of his interests against those of the public; but to keep him in custody beyond the time reasonably necessary for his case to be prepared for trial, for administrative reasons which are essentially unconnected with his case, is another matter altogether. There is no redress against that mischief for somebody who at the end of the day is found to be innocent, and those are all no doubt factors which Parliament had in mind in laying down the provisions that it did."

25. In *R. (McAuley) v Crown Court at Coventry (Practice Note) [2012] EWHC 680 (Admin); [2012] 1 W.L.R. 2766, DC* The President of the Queen's Bench Division stated :

> "It is clear from ex parte McDonald (see page 413) that it is for the prosecution to satisfy the court of the need to extend CTL. It must follow that evidence from the senior management of HMCTS must be provided well in advance of the hearing to the defendant and adduced by the CPS to the court. The judge must then subject the application and the evidence to that rigorous level of scrutiny which is required where a trial is to be delayed and a person confined to prison because of the lack of money to try the case. Although other considerations may apply to cases which are not routine, lack of money provided by Parliament in circumstances where the custody time limits are unchanged, will rarely, if ever, provide any justification for the extension of a CTL. If the Ministry of Justice concludes that it does not have sufficient funds for cases to be tried within CTL, then the Secretary of State must amend the Regulations and seek the approval of Parliament. If that is not done, the court has no option but to apply the present CTL and HMCTS must find the necessary money or face the prospect of a person who may represent a danger to the public being released pending trial. "

26. In *R. (Raeside) v Crown Court at Luton [2012] EWHC 1064 (Admin); [2012] 1 W.L.R. 2777, DC*, (see para.33) the President of The Queen's Bench Division said:

> " This case demonstrates again the necessity of treating the CTL in each case and any application to extend it in the very serious manner required of the statutory provisions which Parliament, consistent with the long tradition of the common law, has enacted to ensure cases are tried speedily and those who have not been convicted are not deprived of their liberty beyond the time specified without good reason. A person should not to be deprived of his liberty where the State cannot meet the duty to try him speedily and within the time limit specified without detailed evidence that is then subject to vigorous and stringent examination to see if the State has established good and sufficient cause to deprive him of his liberty beyond that time limit. "

27. At para. 6.6. of the ruling in R-v- Subhani HHJ Edmunds QC referred to R (Kalonji), at para 18, where Latham LJ said this:

> "where there are real pressures on a court which have been created by exceptional circumstances the court should be careful to examine what the reason is and the proposed solution to it and come to a judgment as to whether or not it can properly be said that the reason is one which is exceptional, on the one hand, and the steps that are proposed to alleviate it appear to have a prospect of success on the other. If the delays which are being experienced by a court are not being alleviated by any steps that are being taken, the judge may be forced to conclude that the position has become one where there is a systemic failure to be able to provide for trials within the custody time limits."

28. Article 6(1) of The European Convention on Human Rights guarantees the right to trial within a reasonable time. The law is that a state is responsible for delays attributable to the prosecution or the court: Orchin v UK; Eckle v Germany, 5 E.H.R.R. 1. Neither the workload of the court, nor a shortage of resources, is a sufficient justification for delay in a trial. The Convention places a duty on contracting parties, regardless of cost, "to organise their legal systems so as to allow the courts to comply with the requirements of Article 6(1)": Zimmerman and Steiner v Switzerland, 6 E.H.R.R. 17.

29. Article 5 (3) of The European Convention on Human Rights is also engaged, but it is not material to my decision today.

30. I repeat what I said at paragraph 16 of my ruling in R-v-Graham:

> "16. In Manchester Crown Court, ex p. McDonald the court stated that the overriding purposes of the relevant legislation are:
>
> (a) to ensure that periods for which unconvicted defendants are held in custody awaiting trial are as short as reasonably and practically possible.
>
> (b) to oblige the prosecution to prepare cases for trial with all due diligence and expedition; and
>
> (c) to invest the court with a power and duty to control any extension, and that any court making a decision on an application for an extension must be careful to give full weight to all of these important objectives.

31. Now I stress the words "unconvicted defendants" because this is a proper description of the status of such persons, given the presumption of innocence. The press release dated 6th September 2020 stated "[t]he moves will protect victims and keep dangerous criminals off our streets". I feel sure that this must have been an oversight.

Does the current coronavirus situation still amount to an exceptional situation?

32. The former Coronavirus Protocol referred specifically, in paragraph 15 , to government health advice in the context of CTL applications.[2] That Protocol no longer applies and so judges , in making assessments of the health situation are not tied to/guided by government advice. Furthermore, although the prosecution's written application to extend the custody time limit cites the old Coronavirus Protocol in support, I disregard the old Coronavirus Protocol. I make no criticism of the prosecution, as its application was uploaded at Q5 on DCS on 25th August 2020.

33. At to the health situation, at para. 6 of her ruling in R-v- Navarre dated 6th August 2020 HHJ Christine Laing QC said this:

> "The national pandemic is by no means over, as we are regularly reminded by the government. It is an exceptional situation and the response to it is out of the hands of the judiciary and the courts. The need for social distancing remains, and local lockdowns are being imposed wherever there is a significant rise in the number of infections. Although some courts have begun hearing jury trials again on the basis of 2m social distancing, it has, as yet, not been possible to hold jury trials in any of the 3 buildings this court currently sits at because there is insufficient space to comply with the requirements. None of the court rooms as currently configured allow for social distancing of the jury, counsel, and all participants in a trial. It goes without saying that the safety of all involved in the court process is paramount."

34. Those observations remain pertinent now, in September 2020, given the regional lockdowns that have been imposed and the temporary closures of courts in Manchester and Liverpool Crown Courts due to issues linked with coronavirus.

35. I am satisfied that the national (and international) coronavirus pandemic continues to amount to an exceptional reason.

Does the coronavirus itself turn every routine case into exceptional case? No

36. I agree with the submission of Mr. Keleher QC that ,from the outset of the coronavirus pandemic, sufficient notice was given to MoJ/HMCTS of the potential consequences and that , to adopt his wording; " it has been going on for so long that the delay in bringing cases to trial has become routine".

37. The fact that the coronavirus health situation is exceptional is not the " be all and end all" when judges take decisions on applications to extend custody time limits. The whole range of other questions, which I set out in this ruling, must also, carefully and thoroughly, be addressed. In particular , I agree with Mr. Keleher QC's submission that " extensions should not be granted solely on the basis of the coronavirus pandemic, in circumstances where there is insufficient

[2] Para.15 – "The coronavirus pandemic is an exceptional situation and the adjournment of CTL trials as a consequence of government health advice and of directions made by the Lord Chief Justice amounts to good and sufficient cause to extend the custody time limit "

evidence of what measures MoJ/HMCTS considered and/or actually implemented – so as to justify the non-availability of a trial date " . I touch upon this further below.

Good and Sufficient Cause

Does the evidence now available to me indicate a lack of funding by The Ministry of Justice (MoJ) /Her Majesty's Court Service (HMCTS)? Yes

Does the evidence now available to me indicate " systemic failure" by MoJ/HMCTS to be able to provide for trials within the custody time limits ? Yes

Do the new proposed measures announced in the press release dated 6th September 2020 and in The Criminal Courts Recovery Plan have a realistic prospect of success in the sense that they will significantly reduce the backlog of outstanding trials for those in custody? No

Does the balance favour an extension? No

38. These issues are inter-linked. I have asked myself these questions and answered them as indicated below:

    a. What concrete measures have MoJ/HMCTS already implemented in the months since lockdown began to 8th September, significantly to reduce the backlog of outstanding trials for those in custody? This is not clear, beyond use of technology and the CVP platform being installed and certain measures mentioned in the 24th August 2020 memorandum. There is, of course, The Jury Trials Working Group, but the work of that group is confidential . The defence tell me that the group has been addressed by The Chairman of The Bar , but there are no minutes publicly available. That group may have been making many very sensible suggestions to MoJ/HMCTS, but I need to concentrate on evidence of delivery " at the sharp end".

    The defence has set out in its skeleton a chronology of relevant dates (see paragraphs 28-41). Mr Keleher QC submits that , from March to July 2020, there has been "complete silence " by MoJ/HMCTS as to the specific concrete measures it has implemented (not merely proposed) to resume jury trials. There is some force in that observation, but I bear in mind that concrete steps were taken with CVP. In paragraph 63 below I make what I hope are useful and balanced comparisons of the concrete steps taken in this jurisdiction as compared with those taken in other countries, who have experienced a similar " coronavirus pandemic trajectory ".

    b. Are those concrete measures already implemented proportionate to the nature and seriousness of the Coronavirus pandemic and the backlog of cases? No

    c. Do those concrete measures already implemented indicate adequate funding or a lack of funding? A lack of funding.

    d. At what speed have the existing concrete measures already implemented been taken? Slowly

    e. Are there alternative measures which might have been taken? Yes

    f. Would the implementation of those alternative measures have indicated adequate funding? Yes

And then, quite separate from the above questions:

g. Does the speed of delivery thus far indicate adequate funding or a lack of funding? A lack of funding

h. As of today, what is the size of the backlog of cases? Over 40,000 (I am not sure as to the precise figure [3]

i. Given the extent of the backlog, do the new proposed measures announced in the press release dated 6th September 2020 and in The Criminal Courts Recovery Plan have a prospect of success in the sense that they will significantly reduce the backlog of outstanding trials for those in custody? No

HMCTS material

39. In addition to the Criminal Courts Recovery Plan and the 6th September 2020 press release I have been provided with:

a. a memorandum ,dated 24th August 2020 , to The Senior Presiding Judge ,and Deputy Senior Presiding Judge (cc: Mr Justice Edis, Chair of the Jury Trial Working Group and Heads of Crime and Delivery Directors) from Helen Measures, Crime Service Owner, HMCTS. This document has been made public.

b. a copy of a HMCTS plexi-glass screens introduction schedule dated 19th August 2020 [4] which provides details for each Crown Court (where available) for:

i. the date of the HMCTS visit to the court to undertake an assessment for screens
ii. the original numbers of courtrooms requiring screens
iii. the number of courtrooms audited during the assessment visit
iv. the number of courtrooms/jury deliberation rooms approved by HMCTS for screens
v. the estimated time of arrival of screens and
vi. the date for confirmed delivery

This schedule shows that the expected time of arrival for plexi-glass screens at Woolwich Crown Court is 21st September 2020, but no details are yet provided in the schedule as to how many courtrooms/ jury deliberation rooms have been authorised.

40. I have also considered the following documents:

a. A document dated 9th July 2020 from the former CEO of HMCTS, Susan Aclan-Hood entitled "Recovery in The Crown Courts" [5] and

[3] According to The House of Commons library the backlog reached almost 50,000 cases in 2013 and exceeded that figure in 2014 and 2015 Court Statistics for England and Wales and 9,262 Crown Court trials were vacated between mid-March and 26 July 2020 – see https://www.criminalbar.com/resources/news/monday-message-07-09-20/

[4] Plexi-glass screens schedule

[5] https://insidehmcts.blog.gov.uk/2020/07/09/recovery-in-the-crown-court/

"In recent months, we have been challenged to stop tinkering at the edges and come up with real solutions to deal with a need for trials. That's what our plan does – using every lever we can to make sure that defendants, complainants, and witnesses aren't left in unending delay. We will keep listening to you – and to any ideas you have for how we can do more, and work better, to ensure that COVID-19, which has threatened so much, does not do irreparable damage to access to justice. "

b. An HMCTS document dated 27th August 2020 entitled "Next steps towards recovery in The Crown Court"[6]

41. My duty is to subject these documents to vigorous and stringent examination to determine the extent to which they assist me in answering the questions at para. 34 above. I balance what is said in those documents against my own personal knowledge of what has occurred in the many cases I have dealt with in the last months.

The 6th September 2020 press release

42. A press release ("6th September 2020 press release") issued on 6th September stated:

> "Suspected criminals held for longer as criminal courts recovery plan announced
> Ministers act to keep dangerous suspects off our streets
>
> - Temporary measure to extend custody time limits by two months
> - £80m plan for criminal courts to recover from pandemic, with more staff and Nightingale courts
>
> People arrested for serious crimes can spend longer in custody as they await trial, under government measures to keep the public safe while courts recover from the pandemic.
> Under temporary legislation announced today, the period of time that accused persons can be held before a trial – known as the Custody Time Limit - will be increased from 182 days to 238 days. These could include violent offenders and those accused of sexual crimes.
>
> The move will protect victims and keep dangerous criminals of our streets – particularly in cases where there is a risk that defendants may abscond or commit offences if released on bail.
>
> It addresses the delays to jury trials that have been caused by the pandemic – despite the world-leading efforts of judiciary, court staff and lawyers to keep justice moving since March and will prioritise cases such as domestic abuse and child protection.
>
> Today's announcement comes as the Lord Chancellor also unveils a comprehensive plan - backed by £80m of funding and developed with the judiciary - to boost capacity across criminal courts.
>
> While the number of outstanding Crown Court cases reached a 10-year low in 2019, the impact of social distancing during the pandemic means courts cannot currently hear the volume of cases required to reduce the backlog.
>
> Under the plan, a range of measures will be deployed to meet this unprecedented challenge. These will include employing 1,600 new staff to support the recovery; setting up more temporary 'Nightingale Courts'**;** a further rollout of technology; and changes to the physical set-up of courtrooms to minimise risk, such as the introduction of plexiglass barriers.
>
> The Lord Chancellor, Robert Buckland QC MP, said:

[6] https://insidehmcts.blog.gov.uk/2020/08/27/next-steps-towards-recovery-in-the-crown-court/

"Throughout the pandemic this government has taken the necessary steps to protect the public while ensuring that justice continues to be delivered. This temporary extension to custody time limits will keep victims and the public safe, and we should not apologise for making that our priority.

At the same time, the measures I have announced today will get the criminal courts system back to where it needs to be – reducing delays and delivering speedier justice for all."

In welcoming the recovery plan, the Lord Chief Justice of England and Wales, The Lord Burnett of Maldon said:

"The pandemic has had an adverse impact on the timeliness of the criminal justice system, with many trials necessarily delayed. This plan is an important document which gives a clear path towards recovery as the judges and magistrates, in partnership with HM Courts Service, the Ministry of Justice and many others, strive to ensure that cases are heard as soon as possible in the public interest and the interests of all those involved in the criminal process."[7]

The legislation is expected to come into force on 28th September and will apply to anyone who is arrested and remanded for an offence deemed serious enough for a Crown Court trial after that date. The new custody time limits will remain in place for nine months. After which, current time lengths will resume.

Meanwhile, the Criminal Courts Recovery Plan sets out a range of measures which are designed to help the courts return to normal business as soon as possible and minimise any delays in delivering justice. These include:

- Employing 1,600 court staff to support recovery measures.
- Maximising the existing physical estate, for instance through introducing plexiglass screens to separate members of the jury to enable safe use of more court rooms.
- Increasing capacity through 'Nightingale Courts' – an initial 10 are up and running with a further eight planned to open shortly.
- Using video technology wherever appropriate – allowing more cases to be heard remotely.
- Exploring new 'COVID operating hours' – increasing the number of hours that court buildings can be used for trials outside the standard weekday times of 10am – 4pm. This time-limited measure seeks to maximise HM Courts & Tribunal Service's (HMCTS) own estate, while ensuring no one party would be required to attend court for longer.

In March, almost half of all courts were closed and jury trials were paused to minimise social interaction between court users. Since then, court staff, legal professionals, and the judiciary have collaborated to prioritise cases and keep the justice system running throughout the pandemic – with up to 90% of all court buildings now open.

Jury trials were reintroduced in May and are now taking place in more than three quarters of Crown Court buildings, with more than 900 cases listed. Additionally, HMCTS is on track to have opened 250 rooms suitable to hear jury trials by the end of October. Magistrates' Courts are also currently disposing of more cases than they receive per week – helping to prevent delays.

[7] The full text of the foreword from the Lord Chancellor and Lord Chief Justice is at page 1 of the CCRP.

This has been made possible by new safety measures being introduced across the estate. This includes employing extra cleaners and rolling out Plexiglass screens to allow jurors to safely sit closer together, enabling more trials to be heard. The transparent barriers are being installed in 160 courtrooms and 80 jury deliberation rooms across England and Wales.

An additional eight Nightingale Courts confirmed today follow an initial 10 unveiled earlier this summer. The temporary sites have been rapidly set up to provide extra capacity for more cases to be heard, adding a further 16 court rooms**.**

Meanwhile, 'COVID operating hours' are being piloted in Liverpool Crown Court. Two lists are operating in one courtroom – one in the morning from 9am to 1pm, and a second in the afternoon from 2pm to 6pm. Crucially, no one individual will be expected to participate in both the morning and afternoon sessions. This temporary proposal is being evaluated, with further pilots scheduled to begin in Hull, Stafford, Cardiff, Snaresbrook, Portsmouth, and Reading in the coming weeks.

A major £142 million investment across the courts system has also been announced to speed up technological improvements and modernise courtrooms"

The HMCTS memorandum dated 24th August 2020

43. I have set out below the headings used in the document, but then I provide my determinations/observations.

Victims and Witnesses (See also CCRP page 2 and paras 3.7-3.11)

44. Victims and witnesses are at the heart of the criminal justice system and special measures enabling them to give evidence in the most appropriate way are of the utmost importance. In the context of the current crisis these measures will not provide significant assistance in addressing the backlog of trials.

45. The section 28 scheme is in its infancy in many courts. It will not provide significant assistance in addressing the backlog of trials.

Youths

46. No youth custody data is provided in this memorandum, but such figures are published. [8] Youths represent a relatively small proportion of the overall numbers and these measures will not significantly to reduce the backlog of trial cases.

Custody time limits (CTLs) (See also CCRP para 2.4)

47. MoJ/HMCTS expect to have 250 usable jury trial rooms "by November 2020". This in my judgement is "too little, too late". The duty on the state to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1) has not been satisfied , whether

[8] For data for June 2020 see https://www.gov.uk/government/statistics/youth-custody-data#history

to the “regardless of cost” requirement or even a lesser requirement of “ high cost” or “ cost proportionate to the exceptional situation “.

HMCTS individual court building risk assessments

48. This is not a material factor.

HMCTS jury trial checklists

49. A checklist will not significantly reduce the number of outstanding trials.

HMPPS Prisoner Escort and Custody Services (PECS) Court assessments

50. The duty is on the state to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1). In my judgement the steps taken up to 8th September 2020 and the new proposed measures do not satisfy the “regardless of cost” requirement or even a lesser requirement of “ high cost” or “ cost proportionate to the exceptional situation “. The state was under a positive duty to act from an early stage of the coronavirus pandemic. It has failed in that duty.

Multi hander trials

51. I have no observations.

Prisoner attendance at court and expansion of video capacity within the prison estate “during the autumn" (See also CCRP page 2 and paras 2.5-2.6, 2.11, 4.8, 6.1-6.2,11.1).

52. This is an area where I draw upon my own first-hand experiences at the coalface since lockdown began and my knowledge of the issue of CVP. In early May 2020, as the prisons liaison judge at Woolwich Crown Court, I prepared a CVP Prison Chart, having liaised directly with senior managers within the prison service. This chart showed how many rooms were available at certain prisons, both for court hearings and for conferences between defence solicitors and defendants in custody. That chart, which was circulated to my fellow judges at Woolwich Crown Court, showed that the facilities available in some prisons were very limited. It also showed that the only realistic way for judges to progress certain cases at Woolwich Crown Court ,which involved defendants remanded in custody to prisons some distance from Woolwich, was to seek to persuade judges at those “calendar” courts (geographically nearer such prisons) to give up slots to Woolwich Crown Court, such was the demand.

    Thereafter, the problems have continued through June, July, August and into September 2020. I have been informed, by my own listings department and by counsel at court hearings, of the many difficulties encountered in obtaining “slots” in prisons for hearings or conferences. To take an example: it was not uncommon, in August 2020, for me to be informed by counsel that the next available slot to take instructions from a defendant in custody, was in October 2020. This has had a damaging effect on the efficient administration of justice.

Increasing jury trial capacity in the Crown Court – including plexi-glass and portable cabins

53. I find it surprising that, after months have passed since lock-down began , the new proposed measures , including the “plexi-glass and portable cabins” package , are only now on the agenda

to deal with this most urgent and pressing issue, especially bearing in mind the stark and express warning as to consequences expressed in the McAuley case referred to above and the duty on the state to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1) whether the appropriate test is "regardless of cost" or even a lesser requirement of " high cost" or " cost proportionate to the exceptional situation ".

54. The obvious questions are: "When did MoJ/HMCTS place its first order for plexi-glass?" "Why has it taken this length of time for HMCTS to start publishing plexi-glass and portable cabin proposals? Especially when, globally, plexi-glass shields were installed in a whole range of businesses and institutions from an early stage in the coronavirus pandemic. I may be wrong, but in the absence of evidence from a senior MoJ/HMCTS official, I am left with the impression that funding was an issue – for why else would Moj/HMCTS not invest in these measures at an earlier stage of the coronavirus pandemic?

COVID Operating Hours (See also CCRP page 2 and paras 4.8,8 and chart on page 9)

55. This is a pilot scheme. A previous pilot scheme of a similar nature was carried out at Croydon Crown Court in 2010. It did not lead to HMCTS introducing the scheme on a regional or national basis. It will take many months for the new proposed pilot schemes to be run, assessed and, potentially "rolled out" on a wider basis. There are many factors which may have to be taken into account in predicting whether such courts will be successful, including the willingness of solicitors and advocates and others to participate. [9] There is no likelihood that these measures will provide significant assistance in reducing the backlog of trials soon.

Are those concrete measures already implemented proportionate to the nature and seriousness of the Coronavirus pandemic and the backlog of cases? No

56. Given that the coronavirus situation has been, and remains as, an exceptional one, the level of response should, from the outset of the pandemic, have been highly significant. Furthermore,

[9] See, for example the reporting of opposition from The Law Society https://www.lawgazette.co.uk/news/extended-hours-society-issues-guidance-for-practitioners/5105308.article , the observations of the Chairman of The Criminal Bar Association James Mulholland QC in his " Monday Message" dated 7th September 2020 – " Extended Operating Hours also do not provide the answer. They have been tried before and numerous problems were evident. These have not been resolved. It is clear that, after relatively sanitised pilot schemes, such hours could not continue for any length of time without, inevitably, leading to discrimination against all involved with caring responsibilities. Further, such a marginal increase in hours in a limited number of courtrooms would have a minimal effect on any backlog." For the full document see https://www.criminalbar.com/resources/news/monday-message-07-09-20/,The London Criminal Courts Solicitors Association response https://www.lccsa.org.uk/lccsa-response-to-extended-court-hours/ and, for example , Garden Court Criminal Defence Team Statement on Extended Operating Hours - An Unworkable and Discriminatory Scheme, https://www.gardencourtchambers.co.uk/news/garden-court-criminal-defence-team-statement-on-extended-operating-hours-an-unworkable-and-discriminatory-scheme

given the increase in coronavirus cases recently and the continuing regional lockdowns, it must continue to be highly significant.

57. Whether any implemented or proposed step to reduce the backlog of unconvicted defendants waiting for their trials to take place is proportionate must be assessed in terms of the scale of the response/steps and the speed of delivery. I do not agree with the view expressed variously by other judges (and perhaps best illustrated by the ruling in R-v-Subhani (see paras 6.8 and 6.9 with my under-lining) that:

> "6.8 .... In my judgement the measures taken by HMCTS first to cope with the initial emergency, then to re-start limited jury trials within 2m guidelines and now to plan towards 1m+ to extend capacity have, so far, been proportionate.
>
> 6.9 Identifying whether there is capacity (albeit with extensive adaptions) within the current estate, and the extent to which alternative venues must be found for cases requiring secure and safe premises is <u>not the work of a moment</u>. <u>I trust that we will continue to hear of steady and effective progress</u>.... Were the current work not to show steady progress, apparent to those affected, the situation may look very different in the future."

58. MoJ/HMCTS have had months to implement measures. I do not agree that the appropriate benchmark is "steady and effective progress" by MoJ/HMCTS and, even it was, that the concrete measures already implemented can properly be so described. Speed of delivery must be taken into account.

59. The proposed new measures fall a long way short of the Article 6(1) "regardless of cost" benchmark. The state has failed in its duty to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1) whether the appropriate test is "regardless of cost" or even a lesser requirement of " high cost" or " cost proportionate to the exceptional situation ".

60. Even allowing for the exceptional circumstances created by the coronavirus pandemic, the proposed expenditure of £80 million does not, given the scale of the problem, amount to highly significant expenditure (see below).

Do those concrete measures already implemented indicate adequate funding or a lack of funding? A lack of funding

61. See above.

At what speed have the existing steps been taken? Slowly

62. The speed of response has been slow.

63. Judicial systems in other countries made timely preparations, towards the start of the pandemic crisis and, for instance, the concrete measures deployed in South Korea and Spain show what can be done when systems are funded at an appropriate level. [10]

[10] In June 2020 judges from all over the word participated in an "inclusive" webinar on the subject of "Lessons Learned from Around the World About Managing Courts in a Pandemic" organised by The National Judicial College of USA. Judges freely exchanged information and presenters showed the concrete measures taken in South Korea, Italy, and Spain to address the issues caused by the pandemic. The presentation showed, for

Are there alternative measures which might have been taken? Yes

Would the implementation of those alternative measures have indicated adequate funding? Yes

64. The following measures have not yet (to my knowledge) been implemented as concrete measures and are not referred to in the CCRP:

    a. Sourcing and potentially using a sufficient number of local assets , such as university premises, university mock-trial court-rooms, government buildings, town halls, hotel conference facilities, sports halls and the like for exclusive use as Crown Courts to deal with both non- custody and custody trials.

    b. Using police stations and military (and other) facilities with secure cells and space to conduct custody trials.

    c. Using special constables to assist with security.

    d. Using military aid to the civil authorities to assist HMCTS/MoJ - See Ministry of Defence policy paper. [11] During the coronavirus pandemic Armed Forces personnel were used very effectively, both in assisting with the construction of the Nightingale hospital at EXCEL in London and also in assisting NHS England Headquarters in the logistical challenge of setting up supply chains to deliver PPE. [12]

    e. The use of multiplex cinemas for non-custody trials – which I understand Scotland intends to introduce from October 2020.

    f. Adopting a more robust approach to ensuring that MoJ/ HMCTS staff return to working at court, rather than from home.

    g. The extensive use of our many excellent Recorders to assist with making a significant contribution to reducing the backlog of trials.

    h. Re-opening courts that have been closed and re-organising any contractual arrangements to enable this to be done.

    i. Introducing a reliable testing procedure for those working in the courts and a track and trace system[13]

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instance, early measures taken in South Korea, including implementing a comprehensive policy , backed up by concrete measures including screening stations, temperature monitoring, mandatory face masks, gel , audio instructions and the like. It also shows plexi-glass in courts in Spain. For the pdf see pandemic presentation

[11] https://www.gov.uk/government/publications/2015-to-2020-government-policy-military-aid-to-the-civil-authorities-for-activities-in-the-uk/2015-to-2020-government-policy-military-aid-to-the-civil-authorities-for-activities-in-the-uk

[12] The latter undertaking was described by The Chief of The General Staff, General Sir Nicholas Carter, during his appearance before The Defence Select Committee on Tuesday 7th July 2020 as " the hardest logistical challenge I have seen in 40 years of service". See video marker from 15.04 to 15.10 at https://parliamentlive.tv/Event/Index/3dc3a00a-fcfd-43d6-ad94-f2ac84ed062d

[13] https://www.criminalbar.com/resources/news/monday-message-07-09-20/

j. Introducing temperature checking equipment.

65. If these (or similar) measures had been taken they would have indicated funding at an appropriate level.

66. The focus is, naturally, on bringing cases to trial where defendants are remanded in custody, but trials involving those on bail have, in my view, also to be taken into account. Why?

    a. Because these trials still have alleged victims, witnesses, and defendants, who are all caught up in the criminal justice system.

    b. because any steps taken thus far/ proposed for the future by MoJ/HMCTS to address delays with non-custody trials give some indication of the levels of funding and the prospects of success elsewhere and

    c. because, given that the experience of the courts is that defendants remanded in custody do sometimes plead guilty on the first day of their trial , it will be necessary, potentially, for courts to have " bail trials" waiting to be called on.

Do the new proposed new additional measures and expenditure have a prospect of success in the sense that they will significantly reduce the backlog of outstanding trials for those in custody? No

67. I now address the specific issues of:

    a. Nightingale Courts

    b. £80 million additional expenditure

    c. 1600 new staff

Nightingale Courts

68. I stated in my ruling in R-v-Graham that:

> "If sufficient investment had been made to create dozens (not ten) additional courts to undertake criminal trials then the situation regarding CTL extensions might be different. But it is not. The reality is that many defendants in custody will not be tried until well into 2021."

69. I stand by those comments.

70. The first Nightingale Court to become operational was Prospero House. This Court" did not get off to a promising start " [14]. Initially one courtroom was not being used for a significant period. Listing details obtained by Crimeline then showed that cases destined and expected to be heard at Southwark Crown Court had been "diverted" to Prospero House. So, Prospero House was not, for a period, providing any significant additional capacity, but rather was just taking up work from another court. [15]

[14] https://www.telegraph.co.uk/news/2020/08/03/nightingale-court-gets-shaky-start-delays-missing-documents/

[15] Footnote 11 of the defence skeleton argument states: "For example, Prospero House acts as an overflow court for Southwark Crown Court; it has capacity for 3 courtrooms but as of 6th September 2020 6 courtrooms at Southwark Crown Court itself are closed".

71. HHJ Laing QC made accurate observations in Navarre (see para. 8) that " the requirements for a criminal trial [include]– a secure dock, cells, a private area for the jury, for counsel, for the judge; secure wi-fi to access DCS; the installation of a recording system " . This is all true, but if "regardless of cost" the state had used readily available resources from an early stage and, say, employed 1600 new staff, at an early stage, then there is no good reason why these requirements could not have been met. None of the measures I set out as potential alternatives are "Herculean". The duty is on the state to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1) whether the appropriate test is "regardless of cost" or even a lesser requirement of " high cost" or " cost proportionate to the exceptional situation ".

72. According to The Chairman of The criminal Bar Association, James Mulholland QC :

> " HMCTS was informed months ago that sixty of these additional courtrooms were needed to deal with bail cases and free up the existing Crown Courts for more serious cases yet there are still currently only four such courtrooms actively dealing with criminal cases and even these have not been fully utilised during the working day. One more courtroom in Peterborough is also to be used. Additional funding announced in the Recovery Plan will provide more courtrooms but none of these will be used for crime. " [16]

£80 million additional expenditure

73. According to one set of statistics , in 2018/19 the criminal legal aid budget in England and Wales was 879 million British pounds, compared with 891 million pounds in the previous year. Criminal legal aid peaked in 2007/08 at just over 1.2 billion pounds, but between 2010/11 and 2015/16 it was cut by 314 million pounds. [17] . Government data indicates that, in 2017–18, expenditure on criminal legal aid was £959 million; this is just over 10% of total gross Departmental expenditure of £9,498 million.[18]

74. An additional £80 million pounds represents additional spending of approximately 11 per cent on 2018/2019 figures. This is sound, reliable evidence that the State has failed to organise its legal systems so as to allow the courts to comply with the requirements of Article 6(1) to ensure trials within a reasonable time of unconvicted defendants remanded into custody ,whether the appropriate test is "regardless of cost" or even a lesser requirement of " high cost" or " cost proportionate to the exceptional situation ".

1600 new staff

75. This measure should have been taken at a much earlier stage.

Does balance favour an extension? No

76. Having regard to all matters raised in written and oral arguments and considering all matters the balance does not favour an extension.

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[16] https://www.criminalbar.com/resources/news/monday-message-07-09-20/

[17] https://www.statista.com/statistics/1098628/legal-aid-spending-in-england-and-wales/

[18] See para.78 of The House of Commons Justice Committee Criminal Legal Aid Twelfth Report of Session 2017–19-Justice Committee Report on Criminal Legal Aid 2017-2019.pdf

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Prosecution submissions on good and sufficient cause

77. The prosecution submits: “” 19. Whilst the Defendant is presumed innocent unless and until proven guilty, and is being detained for a unusually long time pending trial and in conditions which are more restrictive than normal, these factors, say the Crown, are outweighed by the seriousness of the offences alleged, the apparent strength of the case against him, the avoidance of flight risk and the need to protect the public from further offending, which have underpinned the decision to date to deny him bail (Further Offending, Failure to Surrender). ”

78. I remind myself of my reference in paragraph 17 of my decision in R-v-Graham, namely:

> “17. Ex. p McDonald – per LCJ Bingham-Under section 22(3)(a) the court must be satisfied that there is good and sufficient cause for extending or further extending the maximum period of custody specified in the regulations. The seriousness of the offence with which the defendant is charged cannot of itself be good and sufficient cause within the section; nor can the need to protect the public. ... Nor ..can it be a good cause that the extension is only for a short period [as to which, see also R. v Sheffield Crown Court, ex p. Headley [2000] 2 Cr. App. R. 1, DC]. ”

79. Having considered all these factors, cumulatively, I have decided that the balance does not favour an extension of the custody time limit on the Woolwich counts.

Summary of reasons

80. I refuse the application to extend the custody time limit because:

a. In the current situation and bearing in mind all the documents referred to above, the lack of available courtrooms to hear jury trials for defendants in custody is neither a good nor a sufficient cause to extend the custody time limit in this case;

b. The lack of money provided by Parliament to provide sufficient space for trials to be conducted does not amount to a good nor a sufficient cause to extend the custody time limit in this case; and

c. The delays in bringing cases to trial which continue to be experienced by the Crown Court will not be alleviated by the current steps that are being taken /proposed by MoJ/HMCTS.

Has the prosecution acted with all due diligence? No

81. In the course of today’s hearing I “drilled down “ into the history surrounding a positive determination by the NRM as to the defendant being a victim of modern day slavery. Counsel assisted me with a whole range of dates. I do not propose to repeat all the dates here. This case, like so many I encounter, shows the importance of the prosecution taking its “ third party disclosure” obligations seriously and ,if necessary, applying for a summons to compel the NRM authorities to produce “ the full NRM file”. I have experience of issuing such summonses. The production of the full file (even in a redacted form) often reveals facts which become the subject of agreed facts at any trial.

82. In this respect the prosecution has not acted with all due diligence to discharge its disclosure obligations. It is also in breach of my order dated 23rd July 2020 to upload NRM documents by 23rd August 2020.

When might the defendant's trial take place at Woolwich Crown Court?

83. This is a case with a 19-year-old defendant, who has been in custody since 23rd October 2019. I have discussed this case with my listings department, and I have also checked the schedule of proposed trials for Woolwich Crown Court for the next 6 months. Woolwich judges continue to be involved in the triaging of cases.

84. I am informed there is a possibility, by October/ November 2019, that Woolwich Crown Court might have the capacity to undertake 4-6 trials per week, if plexi-glass is installed and up-and-running by then. Furthermore, there is a possibility that this defendant's case might be heard then. The situation as to trial availability changes by the week.

85. Even if a court had been available to hear the trial in short order this would not have affected my decision.

86. Given the NRM aspects of this case I have today made the following directions:

    a. The prosecution must confirm, by 4pm on 15th September 2020 , if it has the full NRM files for Malachi Freeman and Gary Chamberlain (from the Basildon case) and for Tesfa Young-Williams (on the Woolwich case).

    b. If appropriate application can be made to the judge for a summons. That application must be submitted by 29th September.

    c. I will list the case for a hearing on Friday 2nd October 2020 to review progress and make further directions regarding the listing of the defence abuse of process application and to deal with any application to extend the CTL on the Basildon charges, which expire on 6th October 2020.

87. I will also ow be discussing with my listings department whether I can indicate a trial date, in the event that the abuse of process argument fails.

The importance of the independence and impartiality of individual members of the judiciary

88. In the Direction from the President of the Queen's Bench Division and the Senior Presiding Judge for the Withdrawal of Custody Time Limits Protocol of 9 April 2020 there is a reference to the old Coronavirus protocol in these terms:

> "It did not seek to constrain the independent judicial decision necessary in all extension applications. Decisions will continue to be made on the merits of each case with the restricted availability of courts an important factor."

89. When I was sworn in as a judge I took a judicial oath in these terms : " I do swear by Almighty God that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the office of Circuit Judge, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will."

90. Individual judges must not be subjected to undue influence, even if slight and well-intentioned.

My locus in hearing this application

91. On 12th August 2020 , after certain CTL rulings had been circulated to judges on the South Eastern Circuit (including my ruling in R-v-Graham dated 22nd July 2020), I received an email indicating that The Senior Presiding Judge had decided that all contested CTL extension applications were henceforth to be heard only by members of a small panel of judges at each Crown Court and that Resident Judges were to decide which judges were to be assigned to any such panel. A suggested criterion was possession of a full murder ticket. I do not have a murder ticket. I have an attempted murder ticket. Certain judges questioned this decision, but it was confirmed.

92. I note that any Resident judge has the power to deal with certain applications and to make listing decisions. For instance, applications to change legal representation or to extend a representation order are routinely placed before Resident judges for determination.

93. I have already discussed these matters with my Resident Judge. I am today dealing with this CTL extension application.

Prosecution and defence skeleton arguments

94. I am very grateful to counsel, Alex Rooke (prosecution) and Paul Keleher QC and Leon Lynch (defence) for their helpful skeleton arguments. They were prepared on short notice and have been of real assistance to me in determining this application. [19]

HHJ Raynor, Woolwich Crown Court

8th September 2020

[19] Prosecution skeleton argument and Defence skeleton argument