Neutral Citation Number: [2012] EWHC 680 (Admin)

Case No: CO/491/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/03/2012

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
(Sir John Thomas)
and
MR JUSTICE SILBER

Between :

The Queen on the Application of Clark McAuley	**Claimant**
- and -	
Coventry Crown Court	**Defendant**
Crown Prosecution Service	**Interested Party**

(Transcript of the Handed Down Judgment of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Manjit Gill QC and **Talbir Singh** (instructed by **GQS Solicitors**) for the **Claimant**
Sarah Giddens (instructed by **The Treasury Solicitor**) for the **Defendant**
John McGuinness QC for the **Interested Party**

Hearing dates: 29 February 2012

Judgment
As Approved by the Court

President of the Queen's Bench Division :

This is the judgment of the court.

1. This is an application for judicial review of a decision made in the Crown Court at Coventry to extend the time a defendant is permitted to be detained in custody pending trial – the custody time limit (CTL). Its significance is the contention by the claimant that the CTL was unlawfully extended in a routine case as there had been a systemic failure in Her Majesty's Courts and Tribunal Service (HMCTS) by failing to provide sufficient funds to enable defendants in custody to be tried within the maximum period allowed by law. The claimant sought an order quashing the decision and damages.

2. At the hearing, HMCTS conceded that the CTL should not have been extended; we therefore quashed the decision. We stated we would give our reasons later so we could give guidance in relation to the extension of CTL in routine cases.

The facts

3. On 11 July 2011 the claimant was arrested and charged with conspiracy to rob, handling stolen goods and dangerous driving. Bail was refused. On 13 July 2011 the case was sent to the Crown Court at Coventry. On 22 July 2011 there was a preliminary hearing at the Crown Court at Coventry. The listing officer at Coventry Crown Court listed the case for trial on 12 December 2011 with an initial time estimate of four days; this provided a month before the CTL expired, not allowing for the Christmas break. An order was made that the Plea and Case Management Hearing should take place on 21 October 2011.

4. On 21 October 2011 the time estimate was increased from four days to five plus days which meant it was anticipated the case would last more than five days and that it would have to be listed for six. No change was made to the appointed trial date. Orders were made and complied with by the CPS.

5. On Thursday 8 December 2011, two working days before the trial was due to commence on 12 December 2011, there was a pre-trial review hearing. The time estimate was confirmed as six days and nothing was said about the date not being effective. One day later, on Friday 9 December 2011, one working day before the trial was due to start, the case was taken out of the list in circumstances described by the listing officer at the Crown Court at Coventry in her statement dated 17 February 2012:

    i) On 9 December 2011 the listing office at Warwick Crown Court informed her that there was a rape case fixed to be tried on 12 December for which that court had no judge. The CTL for that defendant was due to expire on 12 December. It had already been extended by six months; the listing officer was informed that the witnesses were vulnerable and refused to travel to another court. The listing officer at Warwick Crown Court asked her if Judge Gregory, one of the two judges who was going to try cases at Coventry in the week of 12 December 2011, could come to Warwick to hear that case as no other judge was available. Without any reference to the Resident Judge or the Presiding Judges, she agreed.

ii) The other judge, Judge Faber, due to hear cases at Coventry Crown Court was sitting in a rape trial; that case had been listed for seven days and had been expected to finish before Friday 9 December. On 9 December she was informed it was over-running and would continue to at least 12 December.

iii) There was a Recorder at Coventry Crown Court who had been booked for the week commencing 12 December 2011. Enquiries were made whether he could sit until 19 December 2011; he could not because of another commitment. The Recorder was given another case where the CTL was due to expire on 23 December 2011; the case had been put into the list at short notice on 5 December 2011 when the judge ruled that rather than extending the CTL the case should go to trial. That case had an estimate of two to three days and could therefore be accommodated before the Recorder.

iv) On the information available to her the trial of the claimant's case was taken out of the list as there was no judge available to hear the case; she contacted Birmingham, Warwick and Wolverhampton Crown Courts which are in what is known as the same "cluster" (a term recently introduced when the management structure of HMCTS was reduced). She asked whether those courts could accommodate the case on 12 December 2011. She was informed they could not.

v) She then ascertained that 27 February 2012 was the earliest date it could be heard at Coventry; she spoke to several other Crown Courts including Birmingham, Warwick, Wolverhampton, Leicester, Stafford, Derby, Nottingham, Worcester, Lincoln and Northampton to see if they could fit in an earlier date; none could fit in a six day trial any earlier than 27 February 2012. No evidence was set out in her statement to explain why no-one could hear the case earlier or what steps had been taken to contact the Resident Judge or the Presiding Judges.

6. The statutory scheme is set out in s.22 of the Prosecution of Offences Act 1985. Defendants in custody are to be tried within CTL specified in Regulations made by the Secretary of State, but a Crown Court Judge is entitled to extend the time limit if there is a good and sufficient cause.

7. As the CTL expired on 12 January 2012, a hearing was therefore arranged before HHJ Carr on the first day after the Christmas break on 3 January 2012 at which the CPS applied to extend the CTL on the basis there was good and sufficient cause. The judge was given the information we have set out above by the staff of HMCTS. The CPS contended that it was an "absolutely unavoidable situation". It was submitted on behalf of the claimant that the situation was not unavoidable. He was going to have to spend time in custody because HMCTS had not allocated sufficient resources so that the trial could be heard; in the course of the submissions information was passed to the court by the clerk. The judge set out the events as I have set them out and ruled that the CTL should be extended. His reasoning was as follows:

> "Now, of course courts must look very carefully at any application particularly where there might be a possibility that a case cannot be heard due to lack of resources. I am afraid this is a world where there are competing interests and competing

> interests also means that priorities have to be made and priorities have to be given. Of course it is not unusual for cases to overrun but it appears that what led to the adjournment of this trial was the fact there were unforeseen problems in another trial which caused that to overrun. Unforeseen problems that were not even apparent at the pre-trial review on 8 December. As I say, courts are in a very difficult position, but having considered the particular circumstances of this case, I am satisfied there is good and sufficient cause to extend the custody time limits in this case and accordingly I propose to do so."

The evidence as to non-utilisation of court rooms initially relied on by the claimant

8. An application was immediately lodged for judicial review of the decision on the basis that HMCTS had not provided sufficient money for the case to be heard within CTL. The application named the Crown Court at Coventry as the defendant.

9. In the application, the claimant relied upon minutes of the Crown Court Users Meeting at the Warwick Justice Centre on Thursday 15 December 2011. Under the heading 'Performance', the officials of HMCTS present at the meeting explained that although they were the best court in the "cluster" they were:

> "currently carrying a volume of outstanding work far more than we would like to be carrying and understand and acknowledge the knock-on effects of this and the effect on all parties involved. It is explained that the reason for this and for the fact we are not utilising our court rooms is the reduction in sitting days allocated to us this year. Two papers have been written and filed applying for additional days to be given to us, not least as we are now able to accommodate far more work than we are able to do so at Warwick and so less of our trials are being transferred to other courts. Monthly meetings are now taking place between listing officers from the cluster to discuss issues and see if any assistance can be provided and identify where the greatest needs are. The cluster manager is actively looking for ways of best utilising the days that have been allocated across the cluster to improve the service provided to all involved."

The term "sitting days" is a term used by HMCTS to allocate money to courts; a sitting day represents the money necessary each day to provide all the support necessary for a judge to sit in court to hear a trial or to spend time preparing for a case or considering papers; it includes for example the money needed for the court staff, utilities and other services. Each court is allocated a number of "sitting days" each financial year and that represents the money budgeted for the court for the year. Like all budgets for a business where the volume at a court cannot be predicted with certainty at the start of a financial year, it is obvious that it will need adjustment depending on the business at the court. The minute in fact related to the Crown Court at Warwick and not Coventry, but was relied on by the claimant to support the case that the CTL had to be extended as HMCTS were not utilising available court rooms,

because it had reduced the number of sitting days and so was not allocating sufficient money to the court to enable routine cases to be heard within the CTL.

10. On 18 January 2012 Bean J ordered the application for permission be heard on notice to the defendant and the CPS on 31 January 2012. That order was received by fax at Coventry Crown Court. On 31 January 2012 Bean J granted permission. He ordered the case be listed for a full hearing on 22 February 2012 and that evidence on behalf of the CPS and the defendant be filed by 4 p.m. on 7 February 2012.

11. The Order made by Bean J on 31 January 2012 was apparently not received at the Coventry Crown Court until 3 February 2012 and not forwarded to those who deal with the matter centrally until 6 February 2012. It was clear that the issue raised was of significance, as it called into question the management of budgets and money by the court and HMCTS at a time HMCTS had changed the management structure of the administration of the Crown Court and reduced the budget for the hearing of cases in the Crown Court. In the Acknowledgement of Service served on behalf of HMCTS on 7 February 2012, it was observed:

> "To date the only evidence we have been able to obtain is the e-mail sent by a litigation officer of HMCTS and a one page chronology of events produced by the West Midlands and Warwickshire Court Manager. We are urgently trying to obtain further information to enable the court to determine the matter justly."

The e-mail contained the following passage:

> "Counsel are suggesting we could have used a 3rd court room and obtained another Judge, this would have taken the court sitting days approx 6 days over profile."

12. It would appear that at that time, those dealing with the proceedings at HMCTS believed that an extension of CTL was necessary as otherwise the court would breach its budgetary allocation.

13. On 13 February 2012, HMCTS applied for more time to serve its evidence. The application explained that evidence would explain the attempts to find an alternative court and the guidance given to court staff about listing. On 14 February 2012 the court extended time to enable HMCTS on behalf of the defendant to serve evidence by 17 February 2012. The hearing date was adjourned to 29 February 2012, even though that was after the date at which the case would be heard. It was considered that it would have been unjust to determine the issue without HMCTS having set out a full explanation as to why it had been necessary to put information before the judge which led him to believe that there was good and sufficient cause to extend the CTL and to give HMCTS the opportunity to provide full evidence to this court. The order barred the serving of evidence, if not served by 4 p.m. on 17 February 2012.

14. HMCTS served the evidence on 17 February 2012, the last date for the service of the evidence. The evidence was solely that of the listing officer at Coventry Crown Court which we have in part set out at paragraph 5 above. After setting out that account of the facts, she said:

> "12. Each crown court has a certain number of sitting days allocated to it for the year. Coventry had 498 sitting days for the year 2011-2012. Had we been able to allocate the case to HHJ Gregory, HHJ Faber or [the Recorder] we would not have gone over those sitting days.
>
> 13. I did not realise at the time of my enquiries that I could have listed the case even if that resulted in Coventry Crown Court going over its sitting days. Since these judicial review proceedings were brought, my Cluster Manager has made me aware that if there is a case where a CTL is due to expire, I can list the case even if it takes Coventry Crown Court over its sitting days profile, leaving him to reallocate sitting days from somewhere else. He is to be made aware of any potential over sits to my profile, but has given his authority to do this.
>
> 14. The only thing I could have done differently if I had known that I could use extra sitting days would have been to contact the judicial team to ask them if another judge could be brought in from somewhere else. At such short notice (I would have been asking on Friday 9 December for a six-day hearing starting on the following Monday) in my opinion I think it is very unlikely that they would have been able to find anyone appropriate if I had asked."

15. She added that there were only three criminal courtrooms at Coventry. In the week commencing 12 December 2011 two of those were allocated for criminal and the other was being used for family and civil cases. Even if another judge had been found, there was no guarantee there would have been a courtroom available for the case and she would not have been able to list it at Coventry without severe disruption to other cases.

16. A bail application was heard by the court on 22 February 2012. As the proceedings were still apparently contested and the date of hearing imminent, bail was refused.

The stance of HMCTS on the day of the hearing

17. On the day of the hearing Miss Giddens appeared on behalf of the Ministry of Justice who were representing the Crown Court at Coventry. In a note to the court she set out the position taken. In the light of what was set out in the note the court directed that what was set out should be set out in witness statements. Those were drafted in the course of the morning and the matter heard at 2 o'clock.

18. In the first of the witness statements, a legal advisor at the Ministry of Justice explained that in his view it was established practice that judicial decision-making bodies did not in judicial review proceedings contest the proceedings; their role was simply to provide the reviewing court with relevant information. The statement contained the following two paragraphs:

> "6. [The listing officer]'s witness statement was filed on the 17th February. We took the view that paragraphs

> 13 and 14 of [her] witness statement made it clear that further attempts to accommodate the trial had not been made. The Ministry of Justice Legal Department were made aware of the bail hearing that took place on 22nd February but our view was that as we were not to take an active part in proceedings and had provided the witness statement of [the listing officer], it would not be appropriate for the Defendant to argue either way that the Claimant ought or ought not to be released on bail or be represented at the hearing. All the parties at the bail hearing as far as we were aware knew of this.
>
> 7. After the bail hearing, I received an email from Treasury Solicitors who had heard via Dr Leonard of the Crown Prosecution Service that they considered it was possible that what had happened administratively would be a major feature of the case. We therefore made further inquiries of senior HMCTS colleagues to clarify matters but decided to wait until we saw the skeleton of the Claimant, which was due to be lodged on 4pm on the 24th of February before deciding whether we would need to instruct Counsel to explain our position the Administrative Court. However, we were notified that the Claimant had sought an extension to file their skeleton which I received at approximately 3pm on the 27th. Treasury Solicitors were instructed shortly thereafter to instruct counsel."

19. In the second witness statement served, the Delivery Director for the Midlands Circuit, an experienced former listing officer who had been appointed to this role in June 2011, gave an explanation of what HMCTS should have done. She had only been informed of the lodging of claim in this court on 3 February 2012. At that stage she immediately instigated enquiries to try and list the case sooner; she referred the case to the Presiding Judge who, after considering it, responded that it could be heard as soon as possible by any Circuit Judge. She instructed the court manager at Coventry that the trial must be listed and a Recorder should be found to "backfill" the deployment of a Circuit Judge to hear this case; in other words money would be found so that the claimant would not be held in custody pending trial any longer. She instructed the court manager that the question of sitting days (that is to say adherence to budgetary allocations) was irrelevant. However, despite her considerable efforts, the case could not be brought on, not because of the unavailability of a court or judge, but because the main witnesses in the trial would be unavailable. She was not informed of the bail application that we had heard on 22 February 2012 and so had not been able to explain the position to the court then.

20. Her statement recorded that, on being told on 27 February 2012 that there were a number of issues on which the Court would require evidence, she made extensive enquiries and came to Court to attempt to assist the Court. We are very grateful to her for her assistance; her evidence can be summarised as follows:

i) There were two slots, one in Coventry and one in Leamington Spa on the 3 and 11 January 2012 when there was a Crown Court room free; there had been a request for a Recorder to sit elsewhere on the Circuit and one had been found. She was not able to say whether one could have been found for the slots on 3 and 11 January 2012.

ii) There was no policy to keep courtrooms closed. There was a policy in relation to sitting day allocations.

iii) At the beginning of the financial year 2011/12, previous Directors on the Midland Circuit had given an instruction to the effect that Courts must adhere to their allocation of sitting days. There was no written guidance to listing officers as to how to balance the allocated sitting days and the listing of cases so a case where the defendant was in custody could be heard within CTL.

iv) She would not have expected the sitting day allocation to be taken into account, but would have expected all listing officers to ensure a case was listed within its CTL.

v) Since the commencement of these proceedings, steps have been taken to ensure that all listing officers and court managers were aware that sitting day allocations had a degree of flexibility. It was open to cluster/regional managers to exceed a sitting day allocation at one stage and "claw back" that allocation elsewhere or alternatively to allocate additional sitting days. Cases with a CTL would justify that course of action, if no other alternative means of listing the case existed. All listing staff had been written to to inform them of this. The cluster manager had made it clear to all listing officers that they must get such cases on and sit over the profile to get the cases on. Under no circumstances should a person ever not get a custody case tried because the sitting day profile did not allow it.

The concession made

21. Miss Giddens, whose presentation of the case on behalf of the defendant we commend, told us at the outset of the hearing that HMCTS on behalf of the defendant did not wish to justify the decision made to extend the claimant's CTL.

22. In the light of the evidence put before the court, that was an inevitable concession. The listing officer had been given instructions which were (1) wrong in principle, (2) contrary to the purpose of the Regulations made by the Secretary of State and approved by Parliament which set the CTL and (3) wholly inconsistent with the proper administration of justice. The instructions ignored the responsibility of the judiciary for listing cases and placed insistence on adherence to budgetary forecasts in preference to complying with what Parliament had directed. Elementary principles of justice require an allocation of money so that those accused of crime are tried as quickly as possible and those in custody tried within the time limit imposed by the Regulations approved by Parliament. The instructions were unlawful.

23. It was accepted that if the judge had been provided with the correct information, the CTL would not have been extended. It was therefore accepted that the Court should make a declaration that the claimant had been unlawfully detained in custody through

the wrong extension of CTL and that we should refer the case to a judge of this Division for the assessment of damages. In the light of matters to which we shall refer at paragraph 42 below, Mr Gill QC made it clear that he would seek aggravated and exemplary damages from the defendant.

24. In the light of the way in which the case had been put before the judge and the way in which the case had been dealt with once these proceedings were commenced, we think it necessary to give some further guidance in relation to applications to extend CTL in routine cases where the need has arisen because of the apparent lack of money.

The general approach to custody time limits

25. The time limit placed on trying those in custody is a vital feature of our system of justice which distinguishes it from many other countries. It puts a premium on careful management of all resources and the efficient conduct of business by the court administration under the direction of the judiciary. Not only does it provide sure means of compliance with a principle of the common law as old as Magna Carta that justice delayed is justice denied, but it has the collateral benefit that money is not squandered by the unnecessary detention of persons in prison awaiting trial at significant cost to the taxpayer.

26. The general approach of the court to an extension of a CTL is set out in *R (Gibson) v Winchester Crown Court* [2004] EWHC 361 (Admin); [2004] 2 Cr App R 14 where a Divisional Court presided over by the then Lord Chief Justice, Lord Woolf, with the Vice-President of the Court of Appeal Criminal Division was specially constituted to consider the proper approach of a Crown Court where an issue arose as to the availability of judges able to try homicide cases. The court reviewed the authorities, including the decision of *R v Manchester Crown Court ex p McDonald* [1999] 1 Cr App R 409 where Lord Bingham, the then Chief Justice, observed:

> "The courts have held, although reluctantly, that the unavailability of a suitable judge or a suitable courtroom within the maximum period specified in the regulations may, in special cases and on appropriate facts, amount to good and sufficient cause for granting an extension of custody time limits."

27. Lord Woolf then commented at p 247:

> "Clearly before a court is prepared to grant an extension because of the lack of availability of a courtroom, or a particular judge required to try the case, it should go to considerable endeavours to avoid having to postpone the trial to a date beyond the custody time limits. However, it has to be remembered that the availability of a particular category of judge can be important for the achievement of justice in particular cases. The present case is an example. This is clearly a case which required to be tried by a High Court judge. While expedition is important, so is the quality of the justice which will be provided at the trial. In these circumstances it is

necessary for a court considering an application for an extension of custody time limits to evaluate the importance of the judge of the required calibre being available."

28. Lord Woolf then referred to the availability of resources and the observations in *R (Bannister) v Crown Court at Guildford* [2004] EWHC 221 where May LJ had said:

> "As has been said on a number of occasions, indiscriminate use of the power to extend the custody time limits would emasculate the Parliamentary purpose. As has also been said, and can be well understood, if Parliament willed that these should be the custody time limits, it was for Parliament also to will and provide the resources to enable courts and judges to achieve those time limits.
>
> I have been unable to detect any particular fact referable to this case which was capable of being a particularly good and sufficient cause for extending the custody time limit. That leads to this stark conclusion: Parliament has set custody time limits for various obvious reasons. Parliament ultimately is also responsible for the provision of resources by way of judges, recorders, courtrooms and staff, to enable cases to be heard within those custody time limits. Is it then, in a routine case, to be regarded as a good and sufficient cause for extending the custody time limit that it is impossible to hear the case earlier because the resources available to listing officers make it impossible?"

29. Lord Woolf then continued:

> "I fully understand most of the reasoning of May LJ in the passage to which I have referred. In respect of a routine case the approach which he indicates may generally be appropriate. In routine cases difficulties that arise can normally be overcome. However, I do not accept that it is right to regard May LJ's approach as indicating that the availability of resources, whether courtrooms, judges or other resources, are an irrelevant consideration. The courts cannot ignore the fact that available resources are limited. They cannot ignore the fact that occasions will occur when pressures on the court will be more intense than they usually are. In such a situation it is important that the courts and the parties strive to overcome any difficulties that occur. If they do not do so, that may debar the court from extending custody time limits. It may well be that in *Bannister* further action could have been taken (or action could have been taken earlier) than was taken by the court to ensure that in that case the custody time limit was complied with. However, it is not correct, as has been submitted before us, that judges are entitled to ignore questions of the non-availability of resources."

The systemic failures

30. Although the present case is what is properly described as a routine case, it is quite apparent that in the present financial circumstances facing Her Majesty's Government, pressure on court resources available to try such cases will be tight. That is without doubt a highly relevant consideration even in routine cases. However it is important to note that the Secretary of State when seeking funds for the Ministry of Justice did not make any amendment to the time limit set out in the Regulations or ask Parliament to approve an amendment. Therefore it must be inferred that the Secretary of State and Parliament considered that those responsible for the day-to-day management of HMCTS would be able to manage the money provided to them so that in routine cases, such as the present, it would not be necessary to extend a CTL unless there were exceptional or unusual circumstances.

31. It is clear from the evidence adduced before us that the claimant was right in his primary contention that there had been a systemic failure to manage the budget and to apply the correct principles. We wish to make it very clear that no blame whatsoever should be attributed to the listing officer. She had been given instructions to which we have referred at paragraph 20 iii) which she followed. However the person issuing these instructions seems to have been unaware not only of Annex F to the Consolidated Criminal Practice Direction which sets out the law and practice relating to listing (in terms similar to that set out in the Crown Court Manual) but also to the applicable legal principles and the authorities to which we have referred which are conveniently set out in Archbold (see paras 1-342 to 1-359 of 2012 edition).

32. The systemic failure was a failure to ensure that adherence to budgets did not, save in highly exceptional circumstances, have the consequence that routine cases with a CTL were not heard within that time limit.

i) The listing officer was told by her line management to adhere to the financial budget imposed through the allocation of sitting days instead of referring the matter to the Resident Judge who had the responsibility for the listing at the Crown Court centre.

ii) There was also no system within the Midland Circuit which enabled the management of HMCTS to monitor the position of cases reaching a CTL to ensure that budgets were regularly reviewed so that routine cases were heard within the CTL. Anyone with experience of court administration knows that the volume of work at each court centre fluctuates and the allocation of budgets to each court has to be kept under constant review.

iii) Although we understand and appreciate the constraints under which HMCTS operates, it is very important, particularly in the light of the considerable reduction in experienced staff within HMCTS, that there are clear systems in place to ensure that the CTL and the liberty of the subject are not unlawfully put to one side by simple adherence to budgetary allocations.

iv) It was unfortunate that when this claim was brought by the claimant, it was handled in such a way that it appeared that blame was being placed upon the listing officer (who was until the day of the hearing the only person to provide

information) rather than accepting that unlawful instructions had been given as a result of failures of management.

The approach the Crown Court should take in a routine case where the extension is sought because of a lack of resources

33. In *Gibson*, the guidance given primarily related to the availability of judges to try homicide cases; in *ex parte McDonald*, the guidance was more general. It may be helpful therefore to reiterate guidance in relation to purely routine cases. If in a routine case, where there should ordinarily be no difficulty in the availability of a judge or a physical court room, an issue as to the availability of money by way of sitting day allocation arises, then the case must be referred to the Resident Judge well in advance of any issue arising as to CTL. As Annex F to the Consolidated Criminal Practice Direction makes clear, listing is a judicial responsibility and it is the Resident Judge who is responsible under the guidance of the Presiding Judges for determining listing practice, for prioritising one case over another and deciding upon which date a case is listed and before which judge. The listing officer carries out the day to day operation of that listing practice under the direction of the Resident Judge. That did not happen in this case.

34. As the extension of custody time limits involves the liberty of a defendant, the Resident Judge (or his designated Deputy if the Resident Judge is away from the court centre) must be provided with information on a regular basis, so that there can be proper monitoring of cases nearing their CTL. In a small court centre, such as Coventry, budgets and other resources have to be looked on in a wider context. Such information must therefore include available alternative locations, the availability of judges, the budgetary allocation to the court and other such matters. Provided the experienced listing officer at each court gives the Resident Judge such regular information and there is close co-operation between courts, routine cases should be managed in such a way that money is always available to enable a case being heard within its CTL. It is, of course, essential that bail cases are not delayed and a sufficient budgetary allocation made so that justice is not denied in cases where the defendant is bailed. If more funds or judges are needed at a court centre, then that information must be passed to those responsible for the provision of money who can then review the position with the judges responsible for the listing of cases. It is wrong in principle and contrary to the terms of the Practice Direction for decisions to be made which are not made under the direction of the judges responsible for listing.

35. If, despite such careful management, an application has to be made to extend a CTL in a routine case because the funds by way of allocated sitting days are insufficient to enable the case to be heard within the CTL, then the application must be heard in open court on the basis of detailed evidence. 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.

36. The judge hearing the CTL application must give a full and detailed judgment. As we explain at paragraph 43, this court recognises the decision is for the judge, but will scrutinize the matter rigorously. Without a full and detailed judgment, finding the facts and setting out all the considerations, this court cannot do this speedily and economically.

37. We make these observations because experience has shown that there has been a tendency to deal with these applications on a less than satisfactory basis.

38. In the present case, it is clear from the transcript of the hearing before Judge Carr that the CPS did not provide any evidence; the practice seems to have been followed of information being provided by the court staff to the judges. That was wholly inadequate. The case was not given that intense level of scrutiny required. We hope that the guidance we have given will ensure that if such a case occurs in the future, the application will be heard in the manner we have set out.

The approach to an application for judicial review

39. As is evident from what we have already said, one of the difficulties which arose after the application for judicial review had been commenced was caused by the fact that no-one on behalf of HMCTS had appreciated its importance. No steps were taken until a very late stage to provide any evidence to this court which could explain or justify the decision in the light of the case advanced by the claimant.

40. The explanation given to us was that reliance had been placed upon observations of Brooke LJ in *R (Katrina Stokes) v Gwent Magistrates' Court* [2001] EWHC Admin 569 where at paragraph 23 he said:

> "The function of a court or tribunal which is a necessary party to judicial review proceedings is not, other than in an exceptional case, to contest the proceedings, but to place as much useful evidence as it can before this court in order to enable this court to perform its judicial function."

41. Whereas that applies to the ordinary case without any doubt, this is a case where the claim being made, although in form a criticism of the judicial decision, was a criticism about the provision of money. As had happened in *Gibson*, it was plainly incumbent upon HMCTS in conjunction with the Resident Judge to provide proper evidence. Given the way the case had been dealt with before the judge, there was no-one apart from HMCTS who could appear before the court to explain the position and either seek to uphold the decision or to concede an error had been made.

42. It is that failure to understand the role that HMCTS had to play in this case which led to the unacceptable position on 22 February 2012 when the claimant applied for bail. By that stage it was apparent that HMCTS appreciated that the decision made by the

judge could not be upheld, as the evidence provided to him did not justify the extension of CTL. However, that was not communicated to us when the application was made for bail. Had that position been communicated, the inevitable consequence was that the claimant would have been entitled to bail for the few days prior to his trial. We considered this failure by HMCTS was so serious that it should pay the costs of the claimant on an indemnity basis on and from 22 February 2012.

43. In this court, the court will scrutinise the matter rigorously but at the same time recognise the decision is for the judge and unless this court comes to the conclusion that he has wrongly exercised his discretion it will not interfere. It follows that it is essential that in any such case in the future, the case is dealt with in the manner we have indicated in the guidance we have given.