

HIGH COURT OF JUSTICIARY

PRACTICE NOTE

No. 1 of 2013

High Court First Instance Business

1. Following upon continuing concerns about time being wasted at trial level by reason of late starts, early finishes and unnecessary adjournments, the following is issued, after consultation amongst the judges, as representing best practice in relation to High Court criminal trials. The Practice Note of 20 January 2000 remains in force.
2. Courts should commence at 10.00am on every day of the sitting. This includes the first day. In relation to the latter, where a trial has been set down to commence on a particular day, the court will expect it to start on that day with the empanelling of jurors at that time. This means that: (i) any introductory remarks by the clerk of court should be completed before then; and (ii) any preliminary business, calling before the judge, should be scheduled for an earlier time, such as 9.30am. Particular care should be taken not to permit court time on the first day of a trial to be used for preparation by, or discussion between, parties;
3. During the course of a trial it is customary to allow a jury, which is sitting from 10.00am until 1.00pm, a mid-morning break. That custom is a reasonable one, when the court has started at or about 10am. These breaks should be kept to a maximum of 20 minutes; that is to say, the judge and jury should have returned to court by that time and should expect the accused, counsel and agents, to be in place beforehand;

4. The afternoon session of the court (including Fridays) should reflect reasonable business hours of working. The current practice is to sit from 2 until at least 4.00pm, without a break. This is also regarded as reasonable. However, 4.00pm should not be seen as a compulsory end to the court day. Judges are reminded that the recommendation in the Bonomy Report was 4.30pm, and judges are encouraged to continue beyond 4.00pm when this will result in the completion of the testimony of a witness or witnesses;
5. Time should not be wasted as the result of early afternoon adjournments. For example, in the normal case, there is no reason why, if time permits, speeches should not be "split" overnight. Equally, there is no reason why a charge should not be "split" overnight. In short, in the absence of exceptional circumstances, speeches and charge should proceed up to the end of the normal court day;
6. Preliminary business, as outlined above, should be scheduled to take place in advance of normal trial sittings. Accordingly, although legal representatives may attend to commitments in other first instance courts, provided they are scheduled to conclude before the trial commences/recommences, this should not be permitted to delay trial proceedings;
7. Adjournments should not normally be granted in the middle of a trial in order for parties to carry out preparatory or other work which should have been attended to before the commencement of that trial. In particular, adjournments to "edit" transcripts, "sort" productions and related matters, which ought to have been completed in advance, should not, normally, be permitted;
8. Where a trial has been delayed as a result of a problem with the illness of a juror or other person, decisions on how to progress that trial should be taken quickly and not left unresolved for periods of hours or days;

9. Where a jury has been enclosed with a view to considering a verdict, the court will normally be expected to commence any other trial ready to proceed during that enclosure. This is in accordance with modern practice; the new trial being interrupted at an appropriate moment to take the verdict of the jury in the previous trial; and

10. With a view to ensuring the efficient running of trial courts and to avoid suggestions of forum shopping, all section 76 indictments and cases where a plea is otherwise agreed in advance of the trial diet should be scheduled to call before the judge on the preliminary hearings. A case should not be transferred to another court without the consent of the Administrative Judge for First Instance Work or the Managing Judge in Glasgow.

11. The responsibility of ensuring compliance with the above rests with the trial judge. In that regard, the judge should not always wait until his/her court is 'ready', but should secure that it is ready for him/her on time at the start of each session.

BRIAN GILL

Lord Justice General

Edinburgh

28 January 2013