

SEXUAL VIOLENCE COURT PILOT: GUIDELINES FOR BEST PRACTICE

Object

1. The object of these guidelines for best practice (“the Guidelines”) is to improve case and trial management of offences of sexual violence.
2. The guidelines operate completely within existing jury trial practice under the Criminal Procedure Act (“Act”), the Criminal Procedure Rules (“Rules”) and case and trial management techniques.
3. The guidelines are designed to reduce pre-trial delay and to ensure flexible, workable trial arrangements.

Entry of cases into the sexual violence court pilot

4. Charges covered by the sexual violence court pilot (“the Pilot”) are those listed in Appendix (1) where the defendant has pleaded not guilty and elected trial by jury.
5. The case enters the Pilot at the time of a case review hearing.

Designated judges

6. Only judges designated for the purpose may preside over a case in the Pilot.* The Chief District Court Judge will designate judges from time-to-time based on experience and training.

* Any reference to “a judge” or “the judge” in the Guidelines is to a judge designated in accordance with guideline 6.

The case review hearing

7. All cases in the Pilot must be dealt with by a judge at the case review stage.
8. All defendants must be present at the case review hearing unless attendance has been specifically excused, in advance, by the judge.
9. Both Crown and defence must engage in case management discussions and jointly complete the case management memorandum (CMM) as directed by s 55 Act.
10. The CMM must contain the matters set out in s 56 Act and r 4.8 Rules. It must also contain a summary of facts.
11. Judges must be prepared to engage their power under s 364 Act to make a costs order for procedural failures.
12. At the case review hearing the judge, apart from the matters set out in ss 57 and 58 Act, shall enquire into and make appropriate directions as to:
 - 12.1 whether the case is, or has been identified as, a case falling within the Court of Trial Protocol;
 - 12.2 whether there are issues of disclosure, including disclosure by a non-party;
 - 12.3 whether there are issues of joinder of charges and/or defendants under s 138 Act;
 - 12.4 alternative ways of giving evidence under ss 102 – 107 Evidence Act 2006;
 - 12.5 admissibility of evidence including but not limited to, propensity, complaint;

- 12.6 the length and content of evidential video interviews, and whether they can be truncated or reduced in length;
 - 12.7 the need for interpreters;
 - 12.8 the need for communication assistance under s 80 Evidence Act 2006;
 - 12.9 support persons under s 79 Evidence Act 2006;
 - 12.10 the likelihood of expert evidence (forensic, counter-intuitive, medical) and the availability of expert reports;
 - 12.11 likely trial length;
 - 12.12 any other likely pre-trial applications.
13. All judicial directions will be recorded in writing and distributed to the Crown and defence.

Trial callover

- 14. All cases in the Pilot must be dealt with by a judge at trial callover stage.
- 15. All defendants must be present at the trial callover hearing unless attendance has been specifically excused in advance by the judge.
- 16. Both Crown and defence must file trial callover memoranda as required by s 87 Act and r 5.6 Rules. The memoranda must contain the information required by s 88 Act and r 5.8 Rules. In addition, the trial callover memoranda must address the directions given by the judge at the case review hearing.
- 17. At the first trial callover, dates will be allocated for any pre-trial application and the trial.

18. Further colloquies, prior to trial, will be a matter entirely within the discretion of the judge.
19. As well as dealing with the matters set out in paragraph 16, the judge will enquire into, and make such necessary directions about:
 - 19.1 whether court and witness facilities have been explained to the complainant, and inspection has been arranged;
 - 19.2 whether a complainant intends to view his or her evidential video interview before trial;
 - 19.3 witness availability.

Trial

20. The testing of electronic equipment, eg. CCTV used for the complainant's evidence, is to be done in court as part of the trial process.
21. The judge is to ensure flexibility for the evidence of the complainant recognising the complainant's age and capacity, including regular breaks, early/late start and finish times.
22. Where the complainant gives evidence from another location any documents, eg. photographs, sketches, written statement, letters, should be made available in the witness room for use by the complainant prior to the commencing of his/her evidence.
23. The judge must be alert to and intervene if questioning of any witness, particularly complainants, is unacceptable in terms of s 85 Evidence Act 2006.
24. The order of prosecution witnesses is a matter for the prosecutor, but judges should ensure that expert evidence (medical, counter-intuitive) is addressed to actual trial issues.