

The law

1. (As pertinent to this application) section 22(3) Prosecution of Offences Act 1985 provides that the court can only extend the custody time limit if it is satisfied that the need for the extension is due to some other good and sufficient cause AND that the prosecution has acted with all due diligence and expedition. The prosecution argues that these tests have been met.
2. "What amounts to good and sufficient cause to extend a custody time limit is a matter for the court on the facts of the case." There are an almost infinite variety of matters which may, depending on the facts of a particular case, be capable of amounting to a good and sufficient cause (R v Manchester Crown Court ex parte McDonald [1999] 1 Cr. App. R. 409).
3. the standard of proof embodied in the requirements that the court be satisfied of various matters as a precondition of the exercise of its discretions respectively under section 22(3) and regulation 7(4) is the civil standard (agreed in Manchester Crown Court, ex p. McDonald (and consolidated applications) [1999] 1 Cr. App. R. 409, DC).
4. Archbold 1-436- "any application for the extension of custody time limits will call for careful consideration, and many will call for rigorous scrutiny; when ruling on such an application the court should not only state its decision, but also its reasons for reaching that decision (whichever way) and, if an extension is granted, for holding the conditions in section 22(3) to be fulfilled; where full argument has been heard and the court has given its decision, with reasons, the Divisional Court will be most reluctant to interfere, its role being confined to review, with relief being granted only on one of the familiar grounds for founding a successful application for judicial review: ex p. McDonald (above) (summarising and explaining previous decisions)."
5. Archbold 1-440 – "As to the need, indicated in ex p. McDonald, § 1-436, for reasons to be given in respect of a decision as to whether or not to extend a custody time limit, elaborate or detailed reasons studded with authority are not necessary; what is called for is a succinct, summary and brief account by the judge of the crux of the decision and of the reasons on the submissions made: Leeds Crown Court, ex p. Bagoutie; Same, ex p. Callaghan, The Times, 31 May 1999, DC (CO/1211/99). It will sometimes suffice, in giving reasons, for the judge to summarise the submissions made on one side or the other and to indicate acceptance of them: Chelmsford Crown Court, ex p. Mills."...
6. (1-440 continuing).. " There is a particular need for a reasoned judgment where any "good and sufficient cause" identified is not one for which there is any authoritative precedent: R. (Lake and Bennett) v Northampton Crown Court[2001] EWHC Admin 165; [2001] 3 Archbold News 2, DC. See also Becciev v Moldova (2007) 45 E.H.R.R. 11, ECtHR, as to the need for, and purpose of, the giving of focused and acceptable reasons, so as to satisfy the requirements of art.5(3) of the ECHR (§ 16-53); and R. (McAuley) v Crown Court at Coventry (Practice Note), § 1-448."

7. 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.
8. Exp McDonald – per LCJ Bingham
 - a. 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].
 - b. While it is possible to rule that some matters, such as those we have just mentioned, are incapable of amounting in law to good and sufficient cause for granting an extension, there is an almost infinite variety of matters which may, depending on the facts of a particular case, be capable of amounting to a good and sufficient cause. ... it would be facile to propose any test which would be applicable in all cases" (at pp. 414C–415C).
9. Archbold 1-455 - Even where a “good cause” for an extension exists, the circumstances must be examined rigorously to determine whether the cause is also “sufficient” for any extension, and cited with approval a number of previous authorities, and passages from judgments in such authorities, in support of the proposition that unavailability of a suitable judge or court-room might, in special cases and upon particular facts, amount to a good and sufficient cause for an extension of some period, but emphasised that an application based on such matters should be approached with great caution to avoid the danger that the statutory purpose would be undermined by the too ready grant of applications based on such grounds. In this regard, see also Norwich Crown Court, ex p. Stiller [1992] C.O.D. 310, DC (lack of court room and judge not good and sufficient cause for extension where no indication when such facilities would be available), Maidstone Crown Court, ex p. Schulz and Steinkeller [1993] C.O.D. 183, DC (unreasonable to grant 14 day extension when judge had been told that earliest possible date was 93 days away), and Stoke-on-Trent Crown Court, ex p. Marsden [1999] C.O.D. 114, DC (where reliance placed on lack of suitable judge or court-room it was not enough that there was a clash with another case; it was necessary to show why other case should have priority).

10. Archbold 1-448

“ lack of money provided by Parliament will rarely, if ever, justify an extension of a time limit”

In *R. (Raeside) v Crown Court at Luton* [2012] EWHC 1064 (Admin); [2012] 1 W.L.R. 2777, DC, it was added that, in the overwhelming majority of cases (“routine cases”), the unavailability of a judge or a court room will not provide a good and sufficient cause, absent other circumstances; it will only be in a case of real complexity or one that requires a particular judge, such as a High Court judge or a judge authorised to try murder or attempted murder, that the unavailability of a judge or a court room might well, of itself, go a long way to establishing good and sufficient cause;

11. Where it is said that there are real pressures on a court which have been created by exceptional circumstances, the court should examine carefully the reasons for that situation and the proposed solution to it; it should then make a judgment as to whether it can properly be said that (a)the reasons are exceptional, and (b)the proposed steps to alleviate the situation appear to have a prospect of success.
12. If it can, then there may be a good and sufficient cause for an extension, but if the delays which are being experienced by the court are not being alleviated by any steps that are being taken, the judge may be forced to conclude that there is a systemic failure, in which event listing difficulties in a routine case will not be a good and sufficient cause for an extension: *Kalonji v Wood Green Crown Court* [2007] EWHC 2804 (Admin); [2008] A.C.D. 11,DC.

The Coronavirus Protocol

13. This is a document which has become very familiar to judges and counsel who have been involved in CTL applications during the coronavirus pandemic. As a Circuit Judge I have made reference to it on a number of occasions when extending custody time limits.
14. The following extracts are of relevance in my determination today, namely:
 - a. Paragraph 2- “The purpose of this Protocol is to set a temporary framework during the Coronavirus pandemic for the efficient and expeditious handling of cases that involve a Custody Time Limit (CTL). It does not create legal obligations or restrictions on (any) party. Unless stated otherwise this protocol applies to both magistrates’ courts and Crown Court cases. The Protocol will be reviewed monthly by the SPJ who will determine when it will cease”.
 - b. Paragraph 5 – “This Protocol does not override independent judicial discretion and every case must be decided on its own merits. The Protocol contains rules of practice only and the relevant law is unaffected. The judge responsible for deciding each application will apply the law.”
 - c. Paragraph 15 – “The coronavirus pandemic is an exceptional situation and the adjournment of CTL trials as a consequence of government health advice **and** (

my bold)of directions made by the Lord Chief Justice amounts to good and sufficient cause to extend the custody time limit. As at the date of the adoption of this Protocol this issue has been judicially determined in this way in a significant number of cases and subject to any decision to the contrary on appeal, the Protocol accurately states the approach of the court. ”

Government health advice and permitted activities¹

15. (As at today) The You Gov web-site contains the following extract:

1. Changes in national restrictions

1.1 What is changing and what can I do that I couldn't do before?

The UK Government is continuing to ease restrictions in a manner that is safe, cautious and consistent with our plan.

In recent weeks, a wide range of sectors and activities have been able to restart, in line with COVID-19 Secure guidelines, and we have eased the restrictions on social contact - enabling people to meet in groups of two households in any location (or, as previous, in a group of any six people outdoors).

The Prime Minister updated on progress on 17 July, setting out the next stages of our roadmap. This includes the following steps.

From 24 July:

- in order to help contain the spread of the virus as we open up more premises, face coverings will be required in shops and supermarkets - in addition to public transport where they are already required. People are also strongly encouraged to wear face coverings in other enclosed public spaces where there are people they do not normally meet

From 25 July, subject to rates of transmission closer to the time:

- sports facilities and venues, including such as indoor gyms, fitness and dance studios, indoor swimming pools and indoor water parks, can open

From 1 August, subject to rates of transmission closer to the time:

- employers will have more discretion, in consultation with their employees, on how to ensure people can work safely - working from home is one way to do this, but workplaces can also be made safe by following COVID-19 Secure guidelines

¹ <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do>

- the clinically extremely vulnerable will no longer need to follow advice on shielding, though should still take particular care to follow the social distancing guidelines when meeting people
- bowling alleys, skating rinks and casinos can open
- conference and exhibition centres will be able to reopen in order to enable pilots for business events to take place - they should not yet be open fully to host events more widely
- indoor performances to a live audience can begin to take place, in line with COVID-19 Secure guidelines and subject to the success of pilots that are taking place as soon as possible
- further pilots of larger events can take place in venues, including in sports stadia and business conferences
- small wedding receptions - sit-down meals for no more than 30 people - can take place, subject to COVID-19 Secure guidance
- all remaining close contact services - such as facial treatment and make up application - can restart, in line with COVID-secure guidelines

From 1 September:

- schools, nurseries and colleges will open for all children and young people on a full-time basis
- universities are working to reopen as fully as possible

From 1 October, if prevalence remains around or below current levels:

- we will bring back audiences in stadiums, and allow conferences and other business events to recommence in a COVID-19 Secure way
- In November, our ambition is to scale back remaining social distancing measures, but this is contingent on a number of factors, including consideration of the specific challenges as we move into winter.

1.2 What should I still avoid doing?

It remains the case that you should not:

- socialise indoors in groups of more than two households (anyone in your support bubble counts as one household) – this includes when dining out or going to the pub
- socialise outdoors in a group of more than six people from different households; gatherings larger than six should only take place if everyone is from exclusively from two households or support bubbles

- interact socially with anyone outside the group you are attending a place with, even if you see other people you know, for example, in a restaurant, community centre or place of worship
- hold or attend celebrations (such as parties) where it is difficult to maintain social distancing, besides small wedding celebrations as outlined above
- stay overnight away from your home with members of more than one other household (your support bubble counts as one household)
- It is against the law for gatherings of more than 30 people to take place in private homes (including gardens and other outdoor spaces). Businesses and venues following COVID-19 Secure guidelines can host larger groups provided they comply with the law. This can include weddings and funerals (which we advise should be limited to no more than 30 people), religious ceremonies and services, community activities and support groups. If attending a place or event that is following COVID-19 Secure guidelines, you should take care to limit your interactions with anyone outside of your group and you should continue to maintain social distancing from those that you do not live with. It is critical that you follow these guidelines to keep both yourself and others safe.

Directions from The Lord Chief Justice

16. In the context of CTL extension applications no further directions have been passed down from The Lord Chief Justice.

The lack of courtrooms and the lack of money

17. Since the Coronavirus Protocol was issued the landscape with regard to jury trials has changed. Initially very few jury trials took place. Criminal trials were first reintroduced at The Central Criminal Court on 18th May 2020 and have since resumed at selected

courts across England and Wales. On 22 May it was announced that other courts would begin to resume jury trials². Other courts were added from 22 June.³

18. On Sunday 19 July 2020, HMCTS announced the 10 sites that will be the 'Nightingale Courts'. These public buildings were identified as sites with the capability of being turned into temporary courts to increase capacity for hearings during the pandemic. These temporary courts will hear cases across the jurisdictions.
19. Even with (a) existing Crown Courts using 3 courtrooms to conduct one jury trial and (b) Nightingale courts being used for cases in all jurisdictions the stark reality is that a significant number of defendants in custody will have to wait a long time for their cases to reach a trial in front of any jury. The general focus in the past months has been on listing for trial custody cases with one defendant. Many courts have taken steps to prioritise cases and to create potential lists for the months ahead. However, a significant number of cases involving serious charges and often with multiple defendants will simply not be reached within a reasonable time.
20. Woolwich Crown Court has gone to great lengths to triage cases. The judges have combed our backlog of over 750 cases and identified 150 cases capable of being tried as priority cases, because a defendant is in custody and/or a person involved in the case is a child, elderly or otherwise particularly vulnerable. The priority cases might then expect to be called in for trial in the chronological order in which they were sent to the crown court. However, the judges have identified and continue to monitor cases which are particularly high priority such that they justify jumping the chronological queue for listing for trial.
21. The non-exhaustive criteria for particularly high priority are:
 - (a) needs of a child, elderly or otherwise particularly vulnerable participant;

² <https://www.judiciary.uk/announcements/additional-courts-set-to-resume-jury-trials/>-Additional courts set to resume Jury Trials-On 22 May it was announced that four courts had sworn in juries that week, with positive feedback from participants, and more courts were announced for new trials the following week. On 25 May, Winchester, Warwick and Reading crown courts opened as well. Due to the success of this first round of opening, seven additional Crown Courts will resume jury trials over the next week. The additional courts and their restarting dates are: Swansea Crown Court 15 June 2020, Merthyr Tydfil Crown Court 15 June 2020, Newport Crown Court 15 June 2020, Nottingham Crown Court 15 June 2020, Wood Green Crown Court 15 June 2020, Bradford Crown Court 16 June 2020, Caernarfon Crown Court 17 June 2020. As previously highlighted, arrangements to allow appropriate distancing to be maintained at all times include providing a second courtroom, linked by closed circuit TV, to enable reporters and others to watch the proceedings, and another court room to use for jury deliberations. Court staff will ensure that entrances and exits are carefully supervised, and that all necessary cleaning takes place. Details of the work being led by HMCTS to ensure the safety of all its buildings and further information is available on GOV.UK. The trials will be conducted under the same legal standards and procedures as before the COVID-19 emergency, with twelve jurors. Jury service is an essential part of criminal justice and jurors perform a vital duty. Further work is planned to enable jury trials to proceed in additional courts around the country.

³ <https://www.judiciary.uk/announcements/more-courts-set-to-resume-jury-trials/>

- (b) a case where death was caused – needs of bereaved;
 - (c) a case where life changing physical/psychological injury caused – needs of complainant;
 - (d) rape or other very serious sexual assault – needs of complainant;
 - (e) severe financial loss to individual, e.g. loss of life savings, (particularly since confiscation may enable recovery of compensation)
 - (f) abnormal length of time since alleged offence if highly adverse to cogency of evidence and/or especially stressful for those concerned;
 - (g) if D convicted, likely custodial sentence (after trial) of more than 10 years.
22. Using this system, Woolwich Crown Court has listed cases for trial, one case at a time, through to the middle of October. In addition to those cases, we have a number of particularly serious, complex or lengthy cases (cases of terrorism, murder, attempt murder, complex conspiracy and the like). We have given some of these heavyweight cases “soft” trial dates on the understanding with the parties that those trial dates can only be honoured if circumstances change and we regain capacity to do them. Otherwise, we are not at this stage listing further cases for trial.
23. There are no factors in this case which would merit it becoming a high priority case. Therefore, there is not a realistic prospect of this trial coming on soon.
24. I have discussed with my listings office the potential for other courts in London to take this case soon and the prospects are not good.

My reasons for my decision to refuse to extend the custody time limits

25. My reasons are as follows:
- a. In the current situation, 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;
 - c. The delays in bringing cases to trial which are being experienced by the courts will not be alleviated by the current steps that are being taken by Her Majesty’s Court Service;
 - d. The Protocol was a temporary measure;
 - e. The Protocol does not override independent judicial discretion and every case must be decided on its own merits. The Protocol contains rules of practice only and the relevant law is unaffected. The judge responsible for deciding each application will apply the law. In making this ruling I am applying the law.

- f. Paragraph 15 of the Protocol (which is a rule of practice only) has been used to extend custody time limits, by reference (a) government health advice AND (b) directions from The Lord Chief Justice. The government health advice has changed since the Protocol was first published and I am not satisfied that the current government health advice continues to amount to a good and sufficient reason to extend a custody time limit.
 - g. Members of the public can (or soon will be able to) go into a restaurant to eat and use a gym. Jurors have been undertaking their duties in the existing criminal trials that are taking place. 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.
26. Accordingly the defendant will be released from custody on XXX and will have to abide by the following conditions: