

ALLOCATING CRIME FOR TRIAL IN NORTHERN IRELAND

THE RIGHT HON. LORD JUSTICE MCCOLLUM*

I. THE MAGISTRATES' COURTS AND THE CROWN COURT

Criminal proceedings are heard in the Magistrates' Courts or Crown Court depending on the seriousness of the charge.

The Magistrates' Court, or Petty Sessions, is an inferior court of record, and is principally governed by the Magistrates' Courts (Northern Ireland) Order 1981. The Court is staffed by 17 Resident Magistrates who sit without a jury to try minor offences in a less formal environment than the Crown Court.

Northern Ireland is divided into 7 County Court divisions, consisting of 21 Petty Sessions districts. All Crown Court matters are commenced in the Magistrates' Court with committal proceedings. Proceedings are generally heard in the district or division in which the matter has arisen. When committing a defendant to the Crown Court the Resident Magistrate is required to have regard to the convenience of the parties and witnesses, the expedition of the trial and any directions of the Lord Chancellor.¹

The Crown Court was established by the Judicature (Northern Ireland) Act, 1978² and is a branch of the Supreme Court of Judicature of Northern Ireland.³ The Lord Chief Justice is President of the Crown Court, which is staffed by Lords Justices of Appeal, High Court judges and County

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¹ Judicature (Northern Ireland) Act, 1978, s. 48(1).

² Judicature (Northern Ireland) Act, 1978, s. 4.

³ Judicature (Northern Ireland) Act, 1978, s. 1.

Court judges.⁴ It sits at several different venues in Northern Ireland, and several Crown Courts may be sitting at any one time in the same court building.⁵ The trial of any offence may be heard at any Crown Court in Northern Ireland.⁶

II. DISTRIBUTION OF CRIMINAL BUSINESS THROUGHOUT THE COURTS

The level of court which deals with any particular type of case is largely determined by statute. Offences fall into 4 categories:

A. Summary-only Offences

These may generally only be tried in the Magistrates' Court, although by article 29 of the Magistrates' Court (Northern Ireland) Order, 1981, defendants may have a right to elect for trial if the potential sentence is more than six months' imprisonment subject to certain exception in the case of specified offences.

B. Indictable Offences

Offences triable on indictment and listed in Schedule 2 to the Magistrates' Courts (Northern Ireland) Order, 1981 can be tried summarily but only if both the prosecution and defence consent.

C. Offences Triable in Either Court

These are statutory offences for which the option as to the level of court rests with the prosecution alone. These are familiar in this jurisdiction (see *The State (Clancy) v. Wine*⁷).

⁴ Thus, in addition to the Lord Chief Justice, the Crown Court is staffed by 3 Lords Justice of Appeal, 8 High Court judges and 14 County Court judges.

⁵ The venues include: Armagh, Newry, Antrim, Ballymena, Coleraine, Laganside (Belfast), Craigavon, Londonderry, Downpatrick, Omagh and Enniskillen.

⁶ Judicature (Northern Ireland) Act, 1978, s. 47(1).

⁷ [1980] I.R. 228 at 231.

D. Offences triable only on indictment.

III. DECISION AS TO THE CROWN COURT VENUE TO DEAL WITH
THE CASE

A. Scheduled Offences

Section 74 of the Terrorism Act, 2000 provides that scheduled (*i.e.* terrorist) offences be heard by Belfast Crown Court, subject to directions by the Lord Chancellor or Lord Chief Justice.

B. Non-scheduled Offences

A Resident Magistrate committing a defendant for trial may specify a venue having regard to the convenience of the parties and witnesses, the expedition of the trial and any directions of the Lord Chancellor. The Justice (Northern Ireland) Act, 2002 provides for such directions to be made by the Lord Chief Justice upon devolution. The defendant or prosecutor may apply to the Crown Court to vary the place of trial.

IV. ASSIGNMENT OF THE JUDGE TO HEAR THE CASE

A. Geographical Location

Each County Court division has a County Court judge assigned to it.⁸ The assigned judge(s) will, *prima facie*, deal with the Crown Court work arising in that division. Peripatetic judges assist them in this.

B. Peripatetic Judges

⁸ Londonderry: Her Honour Judge Philpott QC, Recorder of Londonderry; Antrim: His Honour Judge Smyth QC; Armagh and South Down: His Honour Judge McKay QC; Fermanagh & Tyrone: His Honour Judge Foote QC; Craigavon: His Honour Judge Curran QC; Belfast: His Honour Judge Hart QC, Recorder of Belfast, His Honour Judge Brady QC, His Honour Judge Markey QC and His Honour Judge Rodgers.

There are 5 peripatetic County Court judges in Northern Ireland.⁹ These judges move around Crown Courts depending on demand.

C. High Court Judges

High Court judges preside over trials involving the most serious offences. These may take place in Belfast or one of the Crown Court buildings in different parts of Northern Ireland.

V. DETERMINATION OF SUITABILITY FOR ALLOCATION OF PARTICULAR CLASSES OF CROWN COURT BUSINESS

Under section 47(2) of the Judicature (Northern Ireland) Act, 1978 the Lord Chancellor is empowered to make directions as to the level of judge or experience required before a judge may preside over trials concerning specified offences.¹⁰

In practical terms, amongst those offences that may only be tried before a High Court judge the most significant is murder, but the list also includes offences such as treason, genocide, piracy and offences arising under the Official Secrets Acts and the Geneva Convention Acts. The aiding, abetting, counselling or procuring of any of the specified offences may also normally be tried before a High Court judge, but the Lord Chief Justice may direct that attempts, incitement or conspiracy be tried before a County Court judge.

Rape is also placed in a special category in that while the offence may be tried before a County Court judge his or her name must first be included in a Schedule to the Lord Chancellor's Directions. County Court judges are routinely added to the Schedule two years after their appointment.

⁹ His Honour Judge Burgess, His Honour Judge Lockie, His Honour Judge McFarland, Her Honour Judge Kennedy and His Honour Judge Finnegan.

¹⁰ This function will be passed to the Lord Chief Justice on devolution.

Rape cases are frequently sent to the Lord Chief Justice for direction.

VI. ALLOCATION PROCEDURE IN CASES THAT CAN BE HEARD IN
THE CROWN COURT BY EITHER A HIGH COURT JUDGE OR COUNTY
COURT JUDGE

Local Crown Court offices identify cases which may be appropriate for trial before a High Court judge—pre-arraignment—“experience” driven but some guidance from practice directions e.g. *Practice Direction 2/00: Trial of Children and Young Persons in the Crown Court*.¹¹

There may be occasional intervention by the County Court judge, either pre-arraignment or post-arraignment, because of an aspect of the case which has come to light before him, when the situation may be reviewed. Cases are referred to the central log at Belfast Crown Court. In these cases, the case summary and trial papers are forwarded to the Lord Chief Justice’s Office where the case is scrutinised and a recommendation is put to the Lord Chief Justice. The Lord Chief Justice reviews the case and directs its allocation as he sees fit..

VII. FACTORS GUIDING ALLOCATION BETWEEN HIGH COURT AND
COUNTY COURT JUDGES

The allocation of cases between High Court and Country Court judges is guided by:

- the gravity of the charge;
- the complexity of the matter in respect of the facts or the law; and

¹¹ Practice Direction 2/00: Trial of Children and Young Persons in the Crown Court-Paragraph 4: “Court Offices should promptly bring to my attention any Crown Court case involving a young defendant. I shall assign a judge to take responsibility for the case. The judge so assigned will hold such preliminary hearings and give such directions as are necessary...”

- whether the public interest requires trial at the higher level *e.g.* a precedent setting trial or one in which potentially important issues may arise.