

## CUSTODY TIME LIMITS

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How long can you be kept locked up whilst the powers that be get ready for your trial?  
- An article by Aziz Rahman, Solicitor and Jonathan Lennon, Barrister

### WHAT'S THE LAW?

The starting point in this difficult area is the Prosecution of Offences Act 1985. This sets out the regime whereby there is a maximum amount of time that a Defendant awaiting trial can spend on remand. The basic rule is that if the trial has not started within the time limit then the Defendant must be released on bail. This time period is known as the custody time limit (CTL). The problem is that the Crown can, and often does, apply for an extension to the CTL. It is important that defence teams are alive to the relevant law so that any application by the prosecution can be powerfully resisted. You can increase your chances of securing bail, or forcing an early trial (before the Crown are as ready as they want to be), by ensuring that a keen watch is kept on all the prosecution's manoeuvrings, from the moment you are refused bail.

### WHAT IS THE NUMBER OF DAYS I CAN BE KEPT ON REMAND?

What are the custody time limits? The Act creates the Prosecution of Offences (Custody Time Limit) Regulations 1987. Under Regulation 5 the custody time limit for an adult accused of "an indictable offence" is 112 days - other than for the offence of treason which has no CTL! (Reg 5(2)(a)). An 'indictable offence' is an offence which could be tried in the Magistrates' Court or the Crown Court, e.g. ABH or theft. The 112 days relates to the time in between committal by the Magistrates' Court to the start of the trial in the Crown Court. If, however, you are charged with offences which includes an indictable only offence; i.e. an offence which can only be tried in the Crown Court, e.g. murder or any conspiracy, then the custody time limit is 182 days; Reg 6B. This is because you will not be at the Magistrates' stage for long because under s51 of the Crime and Disorder Act 1998 indictable only offences are 'sent' by the Magistrates to the Crown Court. The 182 days starts running from that first appearance at the Magistrates' Court and ends at the start of the trial. The start of the trial in the Crown Court is defined as the point when the jury is sworn or the court accepts a plea of guilty; s22(11A) of the Act.

### CAN I BE KEPT IN LONGER?

Since the enactment of the Human Rights Act 1998 your right to liberty, guaranteed under Article 5 of the European Convention of Human Rights, has taken on extra sig-

nificance. Article 6, the right to a fair trial is also engaged as it provides that the trial should take place "within a reasonable time, Article 6(1). The CPS and the Courts have a duty to act in a way which is compatible with your human rights; your pre-trial liberty cannot be removed just because more time is needed, or because the Crown are not ready to proceed. Frequently the CPS apply to the Courts for extensions to CTLs. What is the test for keeping you in for longer? Under s22(3) of the 1985 Act the Court must be satisfied that the need for the extension is due to:

- i. the illness or absence of the accused, a necessary witness, a judge or a magistrate
- ii. a postponement which is occasioned by the ordering by the Court of separate trials in the case of 2 or more accused or 2 or more offences; or
- iii. some other good and sufficient cause; and

That the prosecution has acted with all due diligence and expedition.

The burden is on the prosecution though they only have to prove their case to the civil standard; i.e. on the balance of probabilities.

### LONG & COMPLEX CASES

The usual application is under (iii) above - the 'good and sufficient cause' meaning, in reality, that the Crown are not going to be ready within the CTL deadline. However, the Crown also has to show that it has acted 'with all due diligence and expedition'.

The leading case on s22(3) remains R v Manchester Crown Court ex p. McDonald (& Consolidated Applications) [1999] 1 Cr. App. R 409, DC where the then Lord Chief Justice considered the 'due diligence' criteria for extending CTLs. The Court noted that

What the Court must require is such diligence and expedition as would be shown by a competent prosecutor conscious of his duty to bring the case to trial as quickly as reasonably and fairly possible. In considering, whether that standard is met, the court will of course have regard to the nature and complexity of the case, the extent of preparation necessary, the conduct (whether co-opera-

tive or obstructive) of the defence, the extent to which the prosecutor is dependent on the co-operation of others outside of his control and other matters directly and genuinely bearing on the preparation of the case for trial.

If the Crown are saying they need more time to gather the 'telephone evidence' - often used in longer, multi-handed cases then, although this takes time to compile, the question has to be asked, what efforts were made to ensure that that evidence was going to be ready in time? A firm with experience of long and complex cases can also point to other complex cases which had the same type of problem but were ready within the CTL. The question has to be asked 'if the case cannot be ready in time then, why not?'. This is where early preparation can pay off. Your solicitors may have written to the CPS at an early stage indicating that they would resist any future application to extend the custody time limit, and could therefore the CPS ensure that it has set in motion all that it needs to to ensure that the trial starts in time. The reply can be used in your favour at any application (whatever it says). If you can predict any particular difficult area likely to cause delay then ensure that you or your solicitors can write to the CPS, at an early stage, demanding that work is commenced without delay so that your Article 5 and 6 rights are respected as any CTL extension application in the future will be resisted.

## **COURT AVAILABILITY**

Another feature of the longer case is that there is a tendency in some Court centres to fix a trial window at a very early stage before any pleas have been entered by any of the Defendants. The problem with that is the Court then has to assume the case is going to be fought by all defendants and therefore the trial is likely to take say 3 months - in such circumstances the Court might list the trial date many months away and considerably outside of your CTL expiry without even a word being mentioned about CTLs by anyone at Court! By the time the trial length is reduced by the fact that several of your co-defendants have pleaded it is too late to fix an earlier trial slot as by then the Court's timetable is completely blocked out. The fact is that a trial should never be fixed for hearing after the expiry of a CTL without full inquiry by the Court- this should include the possibility of changing venue or of removing bail cases from a Court list to accommodate your case. There is a tendency to accept what the Crown Court listing office says about available Court dates without any argument. But if it appears that a substantial case is about to be actually listed for trial at an early stage (sometimes even at the first Preliminary Hearing) and that trial looks set to be more than around 6 months away, then the defence should insist that the Court consider the issue more fully in order to attempt compliance with the European Convention. Although Court availability and resources are a real problem, and a proper consideration for the Courts, it cannot be escaped that the Human Rights Act has placed the Court system

under an even greater duty to ensure that it does all it can to make sure your trial starts on time; a Strasbourg case called *Punzelt v Czech Republic* (2001) 33 EHRR 49 ECHR highlighted this, commenting that the national authorities must display "special diligence" in this area; see also the recent case of *R (Kalanji) v Wood Green Crown Court & Ors* [2007] EWHC 2804 Admin.

## **CONCLUSION**

If your case is a complex one you have one other pitfall to watch out for, again one that is often missed. The prosecution or the defence may ask the Court to list the matter for a 'preparatory hearing' under s29 of the Criminal Procedure and Investigations Act 1996. This is to deal with arguments of law/admissibility etc sometime before the trial starts. One side-effect of such an order is that the trial is deemed to have started on the day of the preparatory hearing, even though it could be months before the start of the actual trial. Thus your custody time limit is rendered meaningless. If all else fails and the Court extends your custody time limit then, if the decision is capable of challenge, immediate Judicial Review proceedings can be issued in the High Court challenging the decision of the Judge.

The main point with CTLs is to have them in mind at the very outset so that if you end up having your CTL extended it is because a decision has been properly reached not to contest the application, or because you have lost the argument fairly and squarely in Court - not because you have missed an opportunity because of a lack of early preparation or through simply accepting a listing officer's decision without enquiry. As always early preparation is the key.

## **AUTHORS**

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