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How to survive your first Jury Trial – A practical guide from a personal perspective

As a recently appointed Grade 2 Advocate having finished my pupillage in September 2023, I have found that jury trials are listed in my diary on a weekly basis. This article covers a few tips which helped me during my first jury trial. It is by no means expected to be a complete guide.

The CPS Advocate Panel at level 2 generally opens in September of each year, with temporary membership for level 2 on the General Crime List now open and due to close on 31 July 2024. Grade 2 status will allow you to step outside the Magistrates Court and conduct Crown Court trials. As with grade 1 applications, the criteria headings for grade 2 are:

- Advocacy
- Advisory Work
- PII and disclosure
- Other relevant knowledge, skills and experience
- Appreciation of the role of the CPS Panel Advocate

Once you have been granted grade 2 status you will be able to start accepting instructions in jury trials including theft, deception, assault (ABH and section 20 GBH), burglary (not the aggravated form), possession of drugs and non-fatal road traffic offences.

This is when the mix of excitement and pressure begins.

If you are lucky enough to hold the brief from the stage where the case is sent from the Magistrates' Court, you will have the opportunity to appear at the PTPH, any subsequent CMH and the PTR (assuming these are listed). This will allow you to really take ownership of the case and get to grips with the issues the jury will have to decide from an early stage. Also remember that you are required to produce a bar standards advice 14 days after the receipt of the brief. Make sure the actions you require are clearly endorsed within your advice. Even if you are instructed after the initial preparatory stages, open the brief and check everything is in order as soon as practicable. This prevents any unnecessary delay should tasks such as applications be outstanding.



Fast-forward to the week of the trial

You will be required to prepare and upload certain documents in advance – The jury bundle index, jury questionnaire, a written opening. Whilst strictly interview edits and agreed facts (section 10 admissions) are not required before the start of trial, things move quickly, so the sooner you can prepare them the better.

The Jury Bundle Index

It may seem simple, but this is something that can easily be overlooked. Printing is now often outsourced so the CPS paralegals who put together the bundle will need ample time to get it all sorted and returned to their offices in time for trial. Try and send your index over to the relevant caseworker at least two weeks prior to the trial date. If the admissibility of certain documents is still to be determined, do not list these in the index but leave the relevant space and make a judgement call on whether they should be printed to save time later or not, to save paper.

The Jury Questionnaire

It is important to remember that individuals may not sit as jurors on any trial which they know or are connected to any people or places with which the case is concerned. Sometimes the Judge will introduce themselves and counsel so it may not be necessary for you to outline these names. I normally outline the people the jury may hear evidence from, or to whom reference may be made during the trial and, if relevant, the names of the places (such as addresses) that may be referred to.

The Written Opening

Preparing a written opening in advance gives you the opportunity to outline properly how it is you put your case. It is important to bear in mind that the opening of the case is not evidence, it is simply an overview or summary which is designed to help the jury understand how the evidence you do present fits together. Most openings I saw throughout my pupillage included 4 key elements:

1. A summary of the prosecution case – What, When, Where, Who.
2. A short address on burden and standard of proof.
3. Reference to the indictment (although of course bearing in mind that it is the Judge's role to address the jury as to the law/any route to verdict).
4. Reference to the issue(s) the jury will need to determine – What is it anticipated the Defendant will raise?

Section 10 Admissions

Generally, these are likely to be uncontroversial pieces of evidence such as arrest, interview, the seizure of items or when an incident was reported to the police etc. Agreeing as much evidence as you can gives you less to worry about when conducting examination in chief, but also think about jury engagement. If you are going to read pages and pages of agreed facts, you may lose the jury's attention.



The day of trial

Be prepared to sit around and wait - I have found that as a grade 2 advocate and with the ongoing court backlog, most trials I have had are listed as 'floating'. This means that the case does not have an allocated court but may be taken by any court if one becomes available. Practically, this means that you spend a lot of time waiting around court for the moment when your name is tannoyed and you're up. Use this time to settle any nerves and ensure that everything is in order.

Go and speak to your witnesses

Take the caseworker with you and SWAC your witness. Make sure you have a copy of the witness statement with you so that the relevant witness can refresh their memory and a copy of the expenses form (normally blue in colour). Normally these documents will be printed off and/or provided by the caseworker. When you are listed as 'floating' it is always worth taking the time to manage their expectations. The reality is that the witnesses may be sat around waiting for quite a while (and sometimes the entire day), whilst the case waits to be allocated a court; it is worth informing them of that.

Check the jury bundles

Always check that the jury bundles are as you would like them to be and include all the necessary documents. Don't just check one of them, check them all. While 11 out of 12 of them may be in perfect condition, there may be one that is missing documents or contains something it shouldn't.

Introduce yourself to your opposition

It may seem simple, but it can be easily overlooked. Introduce yourself as early as you can and ask whether there are any issues which need to be ironed out before you begin. You do not want to find yourself in the situation where there are issues raised mid-trial which leads to a substantial delay or the recalling of witnesses. It may be that some sensible discussions with your opposition can also lead to resolution of the case without the need for a trial at all.

Let the court know it's your first jury trial

Pass on to the usher and/or the Court Clerk that it is your first jury trial. Normally they will pass this on to the Judge, who will ensure that suitable adjustments are made.

Bad Character Applications

Generally, bad character applications are left as a preliminary issue before the trial commences. Some Judges will want to deal with the application prior to you swearing a jury and opening your case. However, other Judges may feel it is appropriate to deal with any bad character applications once they have heard the majority of the Prosecution evidence. This may be common in cases where the Defence objection that the Defendant's bad character is being used to bolster a weak case has some credibility. Ensure you know the convictions you seek to adduce, which gateway under Section 101(1) Criminal Justice Act 2003 you seek to adduce them under, and what the facts of those convictions are if they are to be relied upon. By the point of the first day of trial you should know what the Defence objections are, as a response to any bad character notice/application should be served by the stage 2 date. As you have advance notice of these objections, try to respond directly to the points they raise when you make the application orally in court.



Stages of the trial (prosecution perspective):

Stage 1 - The Selection and Swearing of the Jury

Have in mind a realistic time estimate as to the length of the trial. The court usher/clerk may need this information to choose jury members who can sit for the required number of days. If your trial is starting on a Thursday for example and you have a time estimate of 2 days, it may not be appropriate to select those who are in their second week. During the selection stage, you will be required to read out your jury questionnaire and the Defendant will have the opportunity to object to any individual sitting on the jury prior to that individual being sworn. Once members are selected, the Judge will address the jury as to their role. The usual warnings will be given regarding the duty not to independently research the case or discuss the case with anyone outside of their number until the case has concluded.

Stage 2 - The Opening of the Crown's Case

Although you communicate with the jury when you read out your jury questionnaire, this is your first proper address to the jury. You should aim to engage the jury from your very first sentence. Keep your voice raised, Crown Court rooms can often be large, and your voice has further to travel than that of Defence counsel based on where you sit. If a bad character application is yet to be resolved, do not include the Defendant's bad character in your opening. It seems like common sense but can be overlooked.

Stage 3 - The Evidence

Call your live witness, including the OIC with whom you will read through the Defendant's interview transcript.

Read your agreed facts.

Don't forget to give the usual warning to the relevant witness before they begin their evidence - ask them to keep their voice up and direct their answers towards the members of the jury. It is often worth reminding them that people in court will be taking a note of their evidence and therefore it is important that they speak at a reasonable pace.

If your witness is part-heard, you must not communicate with them until their evidence has concluded.

Stage 4 - The Defence Case

Plan your cross-examination carefully. You should ensure your case is properly put to the Defendant/Defence witness.

Stage 5 - Legal Directions

Many Judges like to provide written directions on the law, agreed with counsel, to the jury before closing speeches, although some save them for later - the court is likely to want counsel's input on the nature and wording of the directions before they are delivered.

Stage 6 - Closing Speeches

You may want to draft your closing speech following the writing of your opening. This ensures that the two are appropriately linked and you know exactly what you seek to persuade the jury of and it can be tweaked once the evidence has been heard - make sure you do tweak it though - it is very important that the evidence contained within your closing speech does not differ from what the jury have heard.



Stage 7 - Summary of the Evidence & Legal Directions

Ensure you take a good note of the evidence as you go along so that you can assist the Judge if he/she asks for clarification on any point.

Stage 8 - Verdict

If possible, be prepared to sentence straight away in the event of a guilty verdict. If there is a victim impact statement, take instructions from the complainant as to whether they want to read this out themselves. Should your jury be hung, you will have to discuss with the reviewing lawyer whether a re-trial is sought.

Stage 9 - Pat yourself on the back

Trials are draining. What will be will be. Your job is to present the Prosecution case to the best of your ability. You don't decide the strength of the evidence, that is a job for the jury. In the event of an unsuccessful outcome, reflect and keep striving to improve.