

IN THE CROWN COURT AT XXX

The Queen

v

XXX

NOTICE OF APPLICATION TO EXTEND A CUSTODY TIME LIMIT

To: The Crown Court at XXX

To: the Defendant XXX

URN: XXX

Crown Court number: XXX

TAKE NOTICE THAT under section 22 (3) of the Prosecution of Offences Act 1985 (the Act) and under Regulation 7(2) of the Prosecution of Offences (Custody Time Limits) Regulations 1987, it is the intention of the Crown Prosecution Service to make an application to extend the custody time limits at Wood Green Crown Court on 20 April 2018.

The charges for which extensions are required are:

1. XXX
2. XXX

The custody time limits expire on XXX

The custody time limits have/have not been previously extended:

Provide details of previous extensions.

Date of Notice: XXX

DETAILS OF THE APPLICATION

This application is made due to the current public health crisis.

In the event that a defendant is unable to attend the hearing at which the application to extend custody time limits is to be made due to circumstances arising out of the current health crisis, the prosecution would invite the Court to consider exercising its discretion to hear this application to extend in the absence of the accused in accordance with Rule 14.2(1)(c) Criminal Procedure Rules, on the basis that it would be just to do so in light of all the circumstances.

As set out in section 22(3) Prosecution of Offences Act 1985, the court can only extend the custody time limit if it is satisfied that the need for the extension is due to:

1. the illness or absence of the accused, a necessary witness, a judge or a magistrate;
2. a postponement which is occasioned by the ordering by the court of separate trials in case of two or more accused persons, or two or more charges; or
3. some other good and sufficient cause;

AND (in respect of any of the foregoing) the prosecution has acted with all due diligence and expedition.

GOOD AND SUFFICIENT CAUSE

Whether there is good and sufficient cause as set out in 1, 2 or 3 above will have to be determined at court.

“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](#)).

This case is currently listed for trial on **XXX**.

The current public health situation arising from the coronavirus pandemic will necessitate the adjournment of the trial in this matter, in accordance with guidance issued by the Lord Chief Justice on 17 March 2020 (<https://www.judiciary.uk/announcements/coronavirus-jury-trials-message-from-the-lord-chief-justice>).

In [*Kalonji v Wood Green Crown Court* \[2008\] A.C.D. 11](#). The court found that exceptional circumstances due to the pressures on the court were capable of being good and sufficient reason for an extension. Where there are real pressures on a court which have been created by exceptional circumstances the court should examine what the reason is and the proposed solution to it and come to a judgment as to whether or not it can properly be said that the reason is one which is exceptional, on the one hand, and the steps that are proposed to alleviate it appear to have a prospect of success on the other.

The prosecution submits that the coronavirus pandemic is an exceptional situation which amounts to a good and sufficient cause to extend the custody time limit. The steps taken to address the situation are mandated by the Lord Chief Justice and are in accordance with government public health advice.

This application is also submitted to demonstrate, on the balance of probabilities that the Prosecution has acted with all due diligence and expedition.

DUE DILIGENCE AND EXPEDITION

The prosecution makes the following submissions in respect of due diligence and expedition (noting that the prosecution has to satisfy this burden on the balance of probabilities):

The prosecution submits that the two tests of good and sufficient cause and all due diligence and expedition are linked (*R v Leeds Crown Court ex parte Bagoutie* TLR 31 May 1999). If the court is satisfied that there is good and sufficient cause to extend the custody time limit but is not satisfied that the prosecution has acted with all due diligence and expedition, it is not obliged to refuse the application to extend if it concludes that the failure of the prosecution has neither caused nor contributed to the need for the extension.

An adjournment for public health reasons is fundamentally separate from the actions of the prosecution and it is submitted that diligence and expedition at earlier stages of the case should be disregarded. The prosecution has acted diligently and expeditiously in making this application. The judge may properly extend a custody time limit even where the prosecution had not acted with all due diligence, if the prosecution's failure is not itself a cause for the required extension (*R (Gibson) v Winchester Crown Court* [2004] 1 WLR 1623).

The Prosecution is Trial Ready

Or (if there are genuine concerns re due diligence and expedition)

The Prosecution submits that it has acted with due diligence and expedition.

The following chronology illustrates this, and explains how issues arising have been dealt with during the management of this case.

CHRONOLOGY

The chronology should concentrate on the dates of offence, charge, first appearance, PTPH, service of case, service of unused and any trial date with further explanations added only when required to provide detail about the reason for any particular delay

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FURTHER SUBMISSIONS

Set out further submissions here.

If the Court is otherwise satisfied that the Prosecution has, on the balance of probabilities, established the grounds for an extension of the custody time limit(s) (per Lord Bingham in *ex parte MacDonald*) and is considering as a matter of its discretion whether to grant the application or otherwise, the Prosecution respectfully reminds the Court that objections to bail remain (*R v Crown Court at Minshull ex parte Smith* (23.8.1999) QB) (J Collins).

SUMMARY

Insert summary

Signed on behalf of the Crown Prosecution Service

Senior Crown Prosecutor

Approved by:

District Crown Prosecutor

This notice was served on the court and defence on