

# **A PRACTICAL APPROACH TO HEARSAY EVIDENCE**

## **THE COMMON LAW DEFINITION OF HEARSAY**

**By Alistair MacDonald QC**

An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted.

### **POINTS TO NOTE**

1. If the assertion made by the declarant of the statement is not tendered to prove the truth of any fact asserted in the declaration, then the statement is not hearsay.
2. As stated, the rule was not accurate in that there were a number of important exceptions to it. These were, confessions made by an accused person, statements made by persons now deceased as to certain specified matters, statements contained in public or particular categories of private documents, res gestae and statements as to health or feelings. Thus, although these were categories of hearsay, of one reason or another they were permitted to be led in evidence.

### **THE BACKGROUND TO REFORM**

It has long been argued that, to assert that hearsay evidence is unreliable is simplistic and, often simply wrong. Further that the rule worked to the disadvantage of both parties to litigation.

Dealing first with the defence. In *Sparks*, a case from 1964, the defendant was charged with indecent assault on a three year old girl. The girl had initially said that it was, in the words prevalent at the time, a “coloured boy” who had assaulted her. Sparks was a white man. The hearsay rule prevented the defendant from adducing the earlier statement of the girl that was highly relevant to his defence and which was probative of his guilt.

In *Thomson*, a case from 1912 in which the defendant was charged with using an instrument to procure an abortion. His defence was that the woman had induced the abortion herself. The defendant was prevented from adducing the fact that the woman had told others, not only that it was her intention to do so, but also that she had done so.

In *Blastland*, from 1986, the defendant was prevented from adducing the evidence that a third party had knowledge of the circumstances of an offence of murder before they were in the public domain and that the third party had subsequently confessed to that murder. All of that was ruled inadmissible on the grounds of the hearsay nature of the evidence.

Similarly, it is not difficult to envisage similar circumstances in which the Crown is prevented from adducing evidence that, to an intelligent observer, is clearly highly probative. Take the old chestnut of the car registration number written down by the police officer within minutes of

the offence. If the witness has forgotten the number, and 99.999% have by the time of trial, the evidence is inadmissible unless, with unusual prescience and a knowledge of the law of evidence not usually possessed by the average constable, he has got the witness to sign and date the note he made.

In addition, as Lord Reid has pointed out, “When the rule proved highly inconvenient, in a particular kind of case it was relaxed just sufficiently to meet that case and without regard to any question of principle.”

So it was that the Roskill Commission on the Criminal Justice System concluded that this issue should be revisited as long ago as the early nineties and recommended that the Law Commission be charged with looking at proposals for reform.

Their paper eventually formed the basis of the hearsay provisions of the Criminal Justice Act 2003.

## **THE NEW LAW**

### **DEFINITION OF HEARSAY**

All the provisions relating to the admissibility of hearsay are contained in Part 11 of the Criminal Justice Act 2003. They begin at section 114 which states:

*(1) In criminal proceedings, a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if-*

*(a) any provision of this chapter or any other statutory provision makes it admissible, or*

*(b) any rule of law preserved by section 118 makes it admissible, or*

*(c) all parties agree to it being admissible, or*

*(d) the court is satisfied that it is in the interests of justice for it to be admissible.*

### POINTS TO NOTE

The definition of hearsay remains exactly as it was formulated in the common law authorities. There is therefore no change to what is and what is not hearsay.

1. The section retains the basic principle of the common law. Hearsay remains inadmissible unless it can be brought within one of the categories set out in section 114. Thus, it is still an exclusionary rule. What it had done, however is vastly to widen the exceptions to the hearsay rule. In addition, it has provided the court with a widely drawn discretionary power to admit hearsay. Under the common law, once the court had decided that the evidence was properly categorised as inadmissible hearsay, it was inadmissible for all purposes, however cogent the evidence was.
2. It remains to be seen to what extent the courts will use this power to admit hearsay evidence. I hope to be proved wrong but I am

willing to bet that it will be much easier for the Crown to adduce this type of evidence in a difficult case than it will be for the defence to do so. If only because the Crown generally has many more witnesses to call than the defence, I am sure that it will benefit the Crown significantly more than it will the defence.

3. It is essential to realise that the inclusionary discretion operates wholly independently of the other parts of the section. In other words, even if the evidence you seek to adduce fails on all other criteria, if the court considers it to be in the interests of justice to admit such evidence, it will be admitted.
4. The authors of the report upon which this part of the Act is founded like to refer to this as the “safety valve”. Whether the advisors of defendants will share that view or consider it to be a ticking time bomb remains to be seen.
5. There was considerable debate in the consultation process as to whether the “safety valve” should only be available to the defence. The rationale for that proposition, supported by no less an authority than Professor Sir John Smith, was that such a provision was meant to deal with a Sparks type case. Further that if it was available only to the defence, it would allow defence advisors to be much more certain in their advice to their clients about the range and scope of evidence that was likely to be admissible against them.
6. The Law Commission in an almost touching way, and with that element of naiveté that only academics can bring to bear on practical subjects said this: “We do not think that there any danger of evidence of poor quality being admitted against a defendant nor

of a principal which exists to protect the defendant being undermined because the court will admit evidence under the safety valve only where it is in the interests of justice for it to be admitted". Have the Law Commissioners been in the York or the Sheffield Crown Courts recently?

7. Rather than wiping away in their entirety the common law exceptions, certain ones are preserved.
8. The court is left with a wide ranging inclusionary discretion if it considers it to be in the public interest to admit the evidence, regardless of the terms of the Act or the preserved common law exemptions.

**WHAT IS A STATEMENT OR A MATTER STATED FOR THE PURPOSES OF THIS SECTION?**

Section 115 says:

(1) .....

(2) *A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form;*

(3) *A matter stated is one to which this Chapter applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been-*

*(a) to cause another person to believe the matter; or*

*(b) to cause another person to act or a machine to operate on the basis that the matter is as stated.*

## POINTS TO NOTE

1. These are prescriptive definitions. If the material sought to be adduced does not fall into the category of a statement as defined in subsection (2) or a matter stated, as defined in subsection (3), they are not within the scheme of the Act. Given that the purpose of these provisions is to bring a unified and coherent code to the admissibility of evidence, if the material is outside the definitions and does not fall within one of the preserved common law exceptions it will be inadmissible.

### **HOW IS THE INCLUSIONARY DISCRETION “THE SAFETY VALVE” TO BE EXERCISED?**

In accordance with section 114 (2) of the Criminal Justice Act 2003:

*(2) In deciding whether a statement not made in oral evidence should be admitted under subsection 1(d), the court must have regard to the following factors (and to any others it thinks relevant)-*

*(a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;*

*(b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);*

*(c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;*

*(d) the circumstances in which the statement was made;*

*(e) how reliable the maker of the statement appears to be:*

*(f) how reliable the evidence of the making of the statement appears to be;*

*(g) whether oral evidence of the matter stated can be given and, if not, why it cannot;*

*(h) the amount of difficulty in challenging the statement;*

*(i) the extent to which that difficulty would be likely to prejudice the party facing it.*

### POINTS TO NOTE

1. The draftsman has resorted to the lazy expedient of listing specifically those points to which the court must have regard in determining whether its discretion to include the evidence should be made whilst permitting the court also to take into account any other matters it thinks relevant. Thus, the list of factors is not exclusive. However, does the fact that the court has specified certain matters means that they are considered the most important considerations and that any other relevant features are to be given less weight?
2. Appeals are likely to be met with a very frosty reception on the allegedly wrong exercise of this discretion. Presumably, an appellant would have to show that the judge was *Wednesbury* unreasonable in the conclusion to which he or she had come or had unreasonably taken into account a factor or factors outside the specified statutory considerations in exercising this discretion.

3. The avowed purpose of the changes to the admissibility of hearsay evidence was to simplify the law and to provide greater certainty as to the circumstances when such evidence will be admitted. The point, of course, being that defendants would know with certainty what evidence would be admissible against them and so be in a position to offer a plea or be determined to fight. In other words, everyone knows where they are. Under the old rules, it was pretty clear what was and what was not hearsay. How it can be said that the conferring of a wide discretion to admit in the interests of justice will make the law more, rather than less, certain is difficult to understand.

### **RETAINED COMMON LAW EXCEPTIONS OF ADMISSIBLE HEARSAY**

These are set out in section 118 and are as follows:

*(1) Public information*

*(a) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them;*

*(b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them;*

*(c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them; or*

*(d) evidence relating to a person's age or date of birth may be given by a person without personal knowledge of the matter.*

*(2) Reputation as to character;*

*(3) Reputation or family tradition*

*(4) Res gestae*

*Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if-*

*(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded;*

*(b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement; or*

*(c) the statement relates to a physical sensation or a mental state (such as intention or emotion).*

*9. Confessions*

*10. Admissions by agents*

*11. Common enterprise*

*12. Expert evidence.*

*(2) With the exception of the rules preserved by this section, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.*

## POINTS TO NOTE

1. The rule as to res gestae has been stated in what are meant presumably to be user friendly terms. As everyone who has ever cross-examined a witness to frightening events knows, the first thing that is put to the witness is that they were so emotionally overpowered that they could not properly take in what was happening. That founds an argument that they have presented a distorted version of events.
2. How it can be suggested that the very thing that, in common sense, would lead any juror to conclude that the witness is likely to have a distorted picture in their minds, should be a foundation for the admissibility of their evidence is difficult to fathom. Perhaps this sort of thing is the price we pay for having academics drafting our laws.
3. In any event, is this what res gestae is really founded upon? I would submit not. The principle behind this doctrine is that the statement is so spontaneously linked to the events being described that the chances of fabrication are reduced.
4. Practically, however, the drafting would seem to permit any competent advocate to drive a coach and horses through the logic of an application made under this subsection.

## **OTHER CATEGORIES OF ADMISSIBILITY**

### **UNAVAILABLE WITNESSES**

By section 116:

*(1) In criminal proceedings, a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if-*

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;*
- (b) the person who made the statement (the relevant person) is identified to the court's satisfaction; and*
- (c) any of the five conditions mentioned in subsection (2) is satisfied.*

*(2) The conditions are-*

- (a) that the relevant person is dead;*
- (b) that the relevant person is unfit to be a witness because of his bodily or mental condition;*
- (c) that the relevant person is outside the United Kingdom and it is not reasonably practical to secure his attendance;*
- (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken;*
- (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.*

(f) (3) *For the purpose of subsection (2 (e) “fear” is to be widely construed and (for example) includes fear or the death or injury of another person or of financial loss.*

(3) *Leave may be given under subsection 2(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard-*

(a) *to the statement’s contents;*

(b) *to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular how difficult it will be to challenge the statement if the relevant person does not give oral evidence);*

(c) *in appropriate cases that ...special measures for the giving of evidence by fearful witnesses etc) could be made in relation to the relevant person; and*

(d) *to any other relevant circumstances.*

(4) *A condition as set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it shown that the circumstances described in that paragraph are caused-*

(a) *by the person in support of whose case it is sought to give the statement in evidence; or*

(b) *by a person acting on his behalf;*

*in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement.*

### POINTS TO NOTE

1. With the exception of the provisions as to the non appearance of fearful witnesses, the section provides for the automatic admissibility of this class of evidence.
2. What is the evidence sought to be adduced is vital, or the only, evidence of the guilt of the accused? Article 6(3)(b) of the ECHR specifies that the accused has the right to “examine or have examined, witnesses against him and to obtain the attendance and examination of witnesses of witnesses on his behalf under the same conditions as witnesses against him.”
3. Surely the presentation of the evidence in a form in which it cannot be tested will not satisfy that requirement. In *R-v-D [2Cr App Rep 2002]* the complainant was an 81-year-old woman who suffered from Alzheimer’s disease. She was admitted to hospital after she alleged that the appellant had indecently assaulted her. The police decided in conjunction with her family and medical advisers, that the complainant should be interviewed and that the interview should be recorded on video. The interview took place within 10 days of the alleged incident. The appellant was charged with attempted rape and indecent assault. The prosecution sought to rely on sections 23 and 26 of the Criminal Justice Act 1988 because it was clear that she would never be fit to give live evidence. On behalf of the appellant it was submitted that, it would not be in the interest of justice under section 26 to admit the video. It was also submitted that the evidence should be excluded pursuant to section 78 of

the Police and Criminal Evidence Act 1984 and that, having regard to the appellant's inability to challenge the content and reliability of the video testimony, a trial in which the video was admitted in evidence would lead to a breach of Article 6 of the European Convention on Human Rights. The judge permitted the video evidence to be played.

4. The Court of Appeal held, dismissing the appeal, that the complainant had a right to have her complaint placed before a jury and to have a jury consider whether her complaint was established; and that the appellant's rights would be protected because he could call medical evidence to challenge the complainant's capacity to remember, understand and say what happened. Accordingly, was right to take the view that it was unlikely that there would be a breach of Article 6(3)(d) if, in balancing the interests of justice as between victim and defendant, the conclusion was that it was in the interests of justice to admit the video in evidence; and furthermore that if it was in the interests of justice to allow the video to be admitted it was unlikely to be unfair under section 78 of the 1984 Act.

5. Query whether, in a case in which there was no element of medical evidence upon which the defendant could rely to challenge the statement of the witness, such a course would be Article 6 compliant.

6. Even though admissibility is automatic by reference to the Criminal Justice Act 2003, the court retains a discretion to exclude under section 78 PACE 1984.

7. What, however, of the defendant? It would seem that he cannot be restrained from adducing evidence of alibi from a witness who has disappeared or is in a far flung corner of the globe whether allegedly or in

reality. Neither is it likely that D1 will easily be prevented from adducing hearsay evidence that D2 was the sole perpetrator of the crime charged.

8. Once professional criminals realise the extent of these provisions, such scenarios are likely to become very prevalent. If they are backed up by evidence from others as to what the missing witness said to them, juries are going to take a lot of persuading that they can be sure that the defendant was responsible for the crime alleged.

### **BUSINESS AND OTHER DOCUMENTS**

These provisions, which I do not set out, are very similar to those previously in force in relation to admissibility of business documents. They are uncontroversial and straightforward in their application.

### **PREVIOUS INCONSISTENT STATEMENTS**

Section 119 provides:

*(1) If in criminal proceedings a person gives oral evidence and-*

*(a) he admits making a previous inconsistent statement; or*

*(b) a previous inconsistent statement made by him is proved by virtue of section 3,4 or 5 of the Criminal Procedure Act 1865:*

*the statement is admissible as evidence of any matter stated in it of which oral evidence would be admissible.*

### **POINTS TO NOTE**

1. This is a big change to the previous position. Formerly, previous inconsistent statements could only be used to prove inconsistency and

could not be relied upon as evidence of the facts stated in the statement. The evidence actually given in court, on oath, was the only evidence in the case from the witness.

2. Now, any fact stated in the deposition, whether adopted by the witness on oath or not can be used as evidence of the truth of that statement.

3. It is therefore open to the jury to believe what the witness said in a statement made near the time as opposed to their evidence some months later.

4. Clearly, judges will have to give very clear directions as to how this evidence is to be approached and magistrates' clerks will have to be astute as to how to advise their bench on the correct approach to this evidence. I suggest that a considerable degree of caution will have to be applied before disavowed statements are relied upon.

### **PREVIOUS CONSISTENT STATEMENTS**

These are dealt with under section 120:

- (1) *this section applies where a person (the witness) is called to give evidence in criminal proceedings.*
- (2) *If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.*
- (3) *A statement made by a witness in a document –*

*(a) which is used by him to refresh his memory while giving evidence, or*

*(b) on which he is cross-examined, and*

*(c) which as a consequence is received in evidence in the proceedings,*

*is admissible as evidence of any matter stated of which oral evidence would be admissible.*

*(4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible if –*

*(a) any of the following three conditions are satisfied, and*

*(b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.*

*(5) the first condition is that the statement identifies or describes a person, object or place.*

*(6) The second condition is that –*

*(a) the witness claims to be a person against whom an offence has been committed;*

*(b) the offence is one to which the proceedings relate;*

*(c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence;*

*(d) the complaint was made as soon as could reasonably be expected after the alleged conduct;*

*(e) the complaint was not made as a result of a threat or a promise; and*

*(f) before the statement is adduced the witness gives oral evidence in connection with the subject matter.*

*(7) For the purpose of subsection (7) the fact that the complaint was elicited (for example by a leading question) is irrelevant unless a threat or a promise was involved.*

#### POINTS TO NOTE

1. This provision is likely to be very bad news for defendants, particularly in cases of vulnerable witnesses. The prosecution will undoubtedly rely upon it heavily to ensure that their witnesses do not fail to come up to proof because of faulty recollection or the passage of time since the making of their statement.

2. This provision must be read in conjunction with the startling changes introduced by Section 139 which is now set out.

## USE OF DOCUMENTS TO REFRESH MEMORY

Section 139:

*(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if-*

*(a) he states in his oral evidence that the document records his recollection of the matter at that earlier time;*

*(b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.*

### POINTS TO NOTE

1. Subsection (2) makes identical provision for the refreshing of memory from sound recordings where a transcript has been made of his evidence.
2. There is no requirement for the document or the sound recording to have been made contemporaneously with the events described.
3. This section represents a sea change in the way witnesses will be examined. I anticipate that the vast majority of witnesses will be permitted to have recourse to their statements in giving evidence. Of course this applies equally to defence witnesses but, by definition, there are many more prosecution witnesses than defence witnesses. The impact of this section will be very great.

## **MULTIPLE HEARSAY**

Section 121 provides:

*(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless-*

*(a) either of the statements is admissible under section 117 (business documents), 119 (inconsistent statements) or 120 (previous consistent statements);*

*(b) all parties to the proceedings so agree;*

*(c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.*

## **CHALLENGING THE CREDIBILITY OF THE ABSENT WITNESS**

Section 124 provides that where a hearsay statement is given in evidence:

*(2) In such a case-*

*(a) Any evidence which (if he had given such evidence) would have been admissible as relevant to his credibility as a witness is so admissible in the proceedings;*

*(b) Evidence may with the court's leave be given of any matter which (if he had given such evidence) could have been put to him in cross-examination as relevant to his*

*credibility as a witness but if which evidence could not have been adduced by the cross-examining party;*

*(c) Evidence tending to prove that he made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that he contradicted himself.*

*(3) if as a result of evidence admitted under this section an allegation is made against the maker of the statement, the court may permit the party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.*

#### POINTS TO NOTE

1. Clearly, it would have been wrong to permit hearsay evidence to be adduced without giving the party against whom that evidence is tendered the opportunity of putting before the court material that would seriously damage the credibility of the maker of the hearsay statement.
2. Further, the party calling the hearsay evidence is permitted, subject to the leave of the court, to adduce evidence to rebut the evidence designed to shale the credibility of the declarant.

#### POWERS OF THE COURT TO EXCLUDE EVIDENCE OR TO STOP THE CASE WHERE EVIDENCE IS UNCONVINCING

Section 126 gives the court a wide discretion to refuse to admit a statement as evidence if:

*(1)(b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking into account the value of the evidence.*

### **POINTS TO NOTE**

1. A court would have to be on very firm ground if it were to exercise this discretion, particularly against a defendant.
2. In accordance with general principle, if the relevant discretion is to apply in favour of the Crown, the court must be satisfied so that it is sure that the discretion should be so exercised.
3. If the discretion is being sought by the defence, the appropriate standard the defendant must achieve is a balance of probability.

### **POWER OF THE COURT TO STOP A CASE**

Section 125 clothes the Crown Court with power to direct an acquittal or order a re-trial at any time after the close of the prosecution case where:

*(1)(a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings; and*

*(b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe.*

## POINTS TO NOTE

1. This sounds at first sight to be a reasonable safeguard against a defendant. However, to judges raised on *Galbraith*, I just cannot see them, as they would see it, usurping the function of the jury in deciding that the evidence was sufficiently unconvincing as to stop the case.
2. What a peculiar word to employ that the evidence must be “unconvincing”. One would have thought that “unreliable” would have been more appropriate in circumstances in which the safety of any conviction is in question. After all, what may be unconvincing to say, HH Judge Dobkin, may be entirely convincing to, say HH Judge James Spencer. The use of this term surely suggests an entirely subjective value judgment. That some judgment is necessary is obvious. However surely a more objective term would have been more appropriate.
3. In addition, section (1) (b) appears to me at least to have been clumsily drawn. What I think it means is that the judge should consider the case as a whole. How that differs from the current position is not altogether clear. If the evidence is sufficiently unconvincing and it is central to the case against the defendant, should the judge not stop the case anyway?
4. Perhaps there is a way in here for defence advocates to argue that the new discretion is much wider in scope than the one exercised under *Galbraith* by reason of the requirement of the judge to make a value judgment as to the reliability of the evidence, an evaluation not hitherto permitted since it was always the province of the jury to make such value judgments. We shall see.

## **PROCEDURAL REQUIREMENTS**

Part 34 of the Criminal Procedure Rules prescribe, that notice should be given of the intention to adduce hearsay evidence in a form set out in the Practice Direction to the court officer and all other parties.

## **PROSECUTOR'S NOTICE**

The prosecutor must give notice of hearsay evidence:

- (a) in the magistrates court at the same time as he gives disclosure
- (b) in the Crown Court, not more than 14 days after-
  - (i) the committal of the defendant; or
  - (ii) the consent to preferment of the bill of indictment; or
  - (iii) the service of the notice of transfer (serious fraud cases and some cases involving children)
  - (iv) where a person is sent for trial, the date of service of copies of the documents containing the evidence on which the charge or charges are based.

## **DEFENDANT'S NOTICE**

Not more than 14 days after the prosecutor has complied or purported to comply with his disclosure obligations.

## **OPPOSING THE INTRODUCTION OF HEARSAY EVIDENCE**

Within 14 days of receiving notice by using the form set out in the practice direction.

## **WAIVER**

A party may waive his entitlement to receive a hearsay notice by informing the court and the party required to give notice.

## **COURT'S POWER TO VARY REQUIREMENTS**

The court may:

- (a) dispense with the requirement to give notice of hearsay evidence;
- (b) allow notice to be given in a different form or orally;
- (c) shorten or extend a time limit, even after it has expired.

## **POINTS TO NOTE**

1. Thank goodness for the court's dispensing powers;
2. However, solicitors and counsel will have to be astute to determine, at a very early stage, what hearsay they seek to adduce since I anticipate that the patience of most courts will wane with endless applications for extension of time.

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