Judiciary of England and Wales

The Better Case Management Revival Handbook

V1 – January 2023

Contents

Foreword

During a period of unprecedented challenges to the criminal justice system the Crown Court Improvement Group (CCIG) was set up.

Its purpose was to allow all involved in the process to contribute their ideas on how to promote recovery, address the backlogs, and achieve long term improvements in the way that the Crown Court operates.

The consensus was that the principles of Better Case Management were sound. The key need was for parties and courts to re-commit to those existing principles, and for the courts consistently to apply them.

This revised and updated BCM Handbook is intended to remind everyone of those principles and to identify good practice. It is rooted in the experience of judges and practitioners who, having applied the principles, saw their effectiveness.

Those who sit in the Magistrates' Courts or Crown Court, as well as those who practice in criminal law MUST apply these principles.

I am very grateful to all who have contributed to this work and to the updating of this guide. The work has been led by HHJ Martin Edmunds KC, in conjunction with the other judicial members of the CCIG, HHJ Peter Blair KC, HHJ Nicholas Dean KC, HHJ Rosa Dean, HHJ Heather Norton and HHJ Samantha Leigh. Comments have been received from other agencies represented on the Group which have been taken into account.

The Rt Hon. Sir Andrew Edis
Senior Presiding Judge of England and Wales

1. Using this Handbook

This revised handbook **replaces the original BCM Handbook and the BCM Defence Toolkit**. It focusses on cases that will be sent to the Crown Court (at the MC and CC stages), so it does not replace Transforming Summary Justice guidance.

This handbook supplements and is subsidiary to, the Criminal Procedure Rules and the Criminal Practice Direction https://www.gov.uk/guidance/rules-and-practice-directions-2020 It is likely that during the currency of this Handbook the CrimPD will undergo substantial revision but that is not expected to affect the principles herein.

Word versions of standard forms are available on the Ministry of Justice – Criminal Procedure Rules Forms site https://www.gov.uk/guidance/criminal-procedure-rules-forms.

This guidance refers to use of the Digital Case System. For cases which do not use the DCS those involved should adapt the processes described.

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2. Better Case Management – the benefits

Experience since the inception of Better Case management in 2016 shows that where the principles were pursued together by judges, advocates, the Crown Prosecution Service (CPS) and defence solicitors:

- Trials were more likely to be effective, with fewer preliminary hearings.
- Where there were to be guilty pleas they were entered earlier in the process.

Those achievements serve the interests of justice for the victims of crime, witnesses, and defendants, and make best use of the resources of the courts and the criminal justice agencies.

Resident Judges are required to ensure effective case management within their court centre and are responsible for leading the judges at their court in applying consistently the principles in this guidance. In turn advocates, CPS and solicitors must be familiar with and apply this guidance.

Resident Judges will best know their court and regional requirements, and thus how best to apply these principles locally. It is of great benefit if Resident Judges draw attention to this handbook and make it clear to practitioners that its overarching principles apply as well as informing them how those principles are to be promoted and applied locally.

3. Better Case Management – Guiding Principles

BCM formed part of the implementation of Sir Brian Leveson's 'Review of Efficiency in Criminal Proceedings' (2015). The key principles were and remain:

- A single national process.
- Getting it right first time.
- Case ownership with an identifiable person responsible for the case.
- Serving material on a proportionate basis.
- The duty of direct engagement and participation from everyone.
- Earlier resolution of pleas where they are to be guilty and the identification of the issues in the case where the pleas are to be not guilty.
- Fewer and more effective hearings.
- Consistent and robust judicial case management.
- Compliance with the Criminal Procedure Rules, Criminal Practice Direction and Court Orders.
- Digital working and making use of technology.

4. A Single national process

The use of the BCM process supported by the use of the PTPH form, Standard Witness Table, and Certificates of Trial Readiness provide a single national process with largely standard directions. This greatly assists both prosecution and defence in developing systems to respond to them and will ease the path into Common Platform.

The process is rooted in the requirements of the Criminal Procedure Rules and Criminal Practice Direction. Those are law and all who work in the courts are expected to be familiar with those requirements, to comply with them and to require compliance with them.

This common approach does not preclude the exercise of judicial discretion and the making of tailor-made orders in individual cases. However local forms are to be avoided and national forms must not be amended for local use.

5. Parties' duty of direct engagement and case ownership

Case ownership, proactive communication, and engagement between all parties are the keys to success.

CrimPR 3.3 requires parties to engage with each other about the issues in the case from the earliest opportunity and throughout the proceedings, to nominate someone responsible for progressing that case, and to tell other parties and the court who that is and how to contact that person.

There must be a renewed emphasis on these duties. Where possible that should be before the first hearing in the Magistrates' Court and it is required BEFORE the PTPH.

We all recognise the importance of the early provision to the defence of evidence and information. In order that defence practitioners can advise defendants, engage with the prosecution and fully contribute to the PTPH, they require the core evidence and other pivotal material. The CPS have committed themselves to provide well-constructed and timely initial details of the prosecution case (IDPC) and then sufficient further materials before PTPH.

In turn the defence need to ensure that a defendant receives advice prior to hearing dates to allow considered decisions on plea, unnecessary adjournments, or "holding" not guilty pleas.

To support engagement it is important that, at the earliest opportunity, prosecution and defence provide the name of the legal representative who has conduct of the case; their telephone number; and their CJSM email address. The prosecution should also provide the contact details for the Officer in the Case. A generic email address is not

appropriate. If that named legal representative is away from the office for any length of time (such as when on leave), an out-of-office message should be left providing alternative contact details. The prosecution is expected to provide similarly specific named details.

By the PTPH the defence should be in a position to provide a considered summary of the real issues in the case, as well as being able to indicate reasonable lines of enquiry or early issues of disclosure.

There is an obligation on the parties to report on their engagement to the court at first hearing and thereafter when asked by the judge. The fact of engagement must be made obvious on the DCS either on an engagement log, or in shared notes. Judges should ask about it, and to question any failures or lack of engagement, and parties should expect to be asked.

6. Access to defendants in custody

To facilitate better access by defence lawyers to their clients in custody HMPPS are working to increase the availability of video and face-to-face legal visit facilities.

Information will be published on booking processes and availability for each individual prison.

7. NHS Mental Health support officers

Many courts now have a Liaison and Diversion service (sometimes called Advice Support Custody Court Service) funded by the NHS. Such officers are usually experienced mental health nurses or have comparable expertise. They can assist where it appears that a defendant has mental health or related problems and are able to advise defence representatives and the courts as well as providing invaluable liaison with prison medical teams and hospitals. Where such facilities are available defence representatives are encouraged to work with the officers and judges will expect them to have done so.

In the event that the court is considering sentence after a guilty plea or conviction the court will consider whether a PSR is required. The responsibility for preparing a report lies with the Probation Service but the L&D Officer can provide invaluable support to the Probation Service in so doing.

8. Digital working and making use of technology

The Guidance of the Lord Chief Justice on Remote Attendance by Advocates in the Crown Court – 14th February 2022 is at ANNEX 1

It is good practice, and helpful to listing officers and parties that whenever a judge directs a further hearing the direction is specific as to time estimate, whether a defendant is required and if so whether in person or by PVL, and whether advocates are required to attend in person or by CVP and for that direction to be recorded. At some Crown Courts it is found convenient to make a "through" direction at first hearing permitting advocates to attend remotely for all non-trial hearings.

In cases where a judicial order has been made that a party can appear by CVP at a forthcoming hearing (e.g. noted on DCS) then that can be taken as applying. Busy list departments may not always accurately reflect those orders on the list so unless there is a formal judicial order countermanding, the judicial order applies.

In cases where the prosecutor expects that a police officer or a person affected by a crime may apply to attend the further hearing remotely that should be considered and determined when the hearing is arranged to avoid the need for administrative applications.

9. Service of materials prior to the first hearing in bail cases and overnight custody cases

The first hearing in the Magistrates' Court is not a mere formality. It requires meaningful engagement prior to and at the hearing.

To enable the first hearing to be effective, CPS prosecutors must serve Initial Details of the Prosecution Case (IDPC). The minimum requirements appear in CrimPR 8.3 supplemented by the CrimPD 3A.12, but prosecutors should not limit themselves to serving the minimum.[1]

The CPS has agreed that, in a phased roll-out, for cases charged by the CPS upon the Code for Crown Prosecutors **Full Code Test (FCT)** they will serve as IDPC the evidence available to the prosecutor when making their FCT charging decision. If this is not possible due to the size of the case and its incompatibility with Common Platform, then this full IDPC will be served once the case is opened in DCS.

Therefore for **non-custody cases** where the decision to prosecute is made on the Full Code test (FCT) there is now an expectation that the IDPC will comprise the evidence

[1] See Charging (The Director's Guidance) – sixth edition, December 2020 – particularly part 10 and Annex 7

available to the prosecutor when making their FCT charging decision and so be more detailed and comprehensive. Service is required no less than five days before the hearing. This disclosure should include the provision of key digital materials (e.g. CCTV footage) in formats accessible to the defence.

For **custody cases** where the decision to prosecute is made on the **Threshold Test (TT)** the information will be less extensive but must comply with Crim PR 8.3.

Defence representatives should be pro-active in informing the prosecutor that they have been instructed, and whether any further materials are required so that they can properly advise their client prior to the hearing.

As Common Platform becomes more widely available access to the material by defence representatives will be easier, and will better identify defence representatives.

For information, the CPS guidance is that the **Full Code Test (FTC)** should be applied:

- when all outstanding reasonable lines of inquiry have been pursued; or
- prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution.

The Full Code Test requires prosecutors to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge and if there is whether a prosecution is required in the public interest.

In limited circumstances, where the Full Code Test is not met, the **Threshold Test** may be applied to charge a suspect. All five conditions set out below must be met before the Threshold Test can be applied:

- There are reasonable grounds to suspect that the person to be charged has committed the offence
- Further evidence can be obtained to provide a realistic prospect of conviction
- The seriousness or the circumstances of the case justifies the making of an immediate charging decision
- There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so
- It is in the public interest to charge the suspect

10. THE GUILTY PATH: Committals for sentence/Sendings where guilty pleas are entered or indicated at the Magistrates Court

To obtain maximum credit for plea it is essential that, for either way offences, a guilty plea is entered at the Magistrates' Court, or, for indictable only offences, that there is an unambiguous indication of guilty plea recorded on the BCM form.

Any basis of any plea should either be agreed at the Magistrates' Court and recorded on the BCM form or, failing that, uploaded to the DCS (and in future CP) with notice to the prosecution. A basis does not ultimately bind the sentencing judge.

10.1. Pre Sentence Report before Plea protocol

The Pre-Sentence Report before Plea protocol (1st October 2020 – Annex 2) provides a process by which PSRs can be prepared in advance of a plea where it is anticipated the defendant will be sentenced in the magistrates' court. Where a representative has firm instructions that their client wishes to plead guilty that representative should consider invoking that process.

10.2. Ordering a PSR in the Magistrates' Court on Committal for Sentence

This guidance applies pending an update to CrimPD 3A.9.

There should be liaison between Crown Courts, Magistrates' Courts and the Probation Service about the resources available so that courts are aware what level of provision is available.

In most areas the Probation Service will now be able to provide Pre-Sentence Reports (PSRs) in all cases which are committed to the Crown Court.

In other areas the Probation Service will not yet be able to provide PSRs in all cases and in such areas the magistrates must reach a decision whether a PSR is necessary applying the following guidance.

The sentencing court must obtain a report on an offender 18 or over unless it considers it unnecessary to do so. Additional conditions apply where the offender is aged under 18[2].

The purpose of a PSR is to facilitate the administration of justice, and to reduce an offender's likelihood of reoffending and to protect the public and/or victim(s) from further harm. A PSR does this by assisting the court to determine the most suitable method of sentencing an offender[3].

Unless there is already in existence a recent PSR (not normally more than 6 months old) which is adequate to the new case, **the Magistrates' Court will <u>generally</u> order a PSR when committing for sentence where**:

[2] Sentencing Act 2020 s.30
[3] Sentencing Act 2020 s.31

- **The defendant is of previous good character, or young (under 18, or under 21 and of previous good character or with no previous prison sentence), or otherwise vulnerable, OR**
- **The defendant has caring responsibilities, OR**
- **The sentence that might be appropriate in the Crown Court, before credit for plea, is likely to be 3 years or less such that the Crown Court will need to consider a suspended or community sentence, OR**
- **The defendant has committed a sexual offence (including indecent images) or domestic violence offence OR**
- **The sentencing court will have to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (dangerousness).**

If a report is to be ordered the magistrates should consider if any separate drug or alcohol treatment assessment is also required.

Where a defendant has committed a further offence during the period of a community order or suspended sentence it will usually be sufficient to order a progress report from the supervising officer to supplement an existing PSR.

Ordering a report at the time the case is committed for sentence allows probation maximum time to prepare a quality report, minimises delays, and reduces the risk of the need to adjourn the sentencing hearing. The complexity of reports required for the Crown Court and the limited capacity of the probation service to provide “on the day” reports means that organising a report in advance is much to be preferred.

If the Magistrates’ Court refuses to order a PSR the defence should be reminded that they may renew their application to the Crown Court and should do so in writing in advance of the date set for sentence to avoid an ineffective hearing.

In all cases where there may be a guilty plea it is valuable for the defence to liaise with the Probation Service in advance to discuss whether a report may be of assistance and any particular issues that ought to be considered. If there are mental health issues the defence should also liaise with any mental health support service provided at the court.

Magistrates should ensure that arrangements are in place to ensure that the Probation Service is informed of any order for the preparation of a PSR.

10.3. Victim Personal Statements and Restorative Justice

The Magistrates' Court should also remind the parties where appropriate:

- Of the need for a Victim Personal Statement, or updated Victim Personal statement.
- Of the need for the parties to consider pre-sentence Restorative Justice (in areas where that is available).

10.4. Decision to plead guilty after sending but before PTPH

Where a defendant decides that they will plead guilty after being sent for trial but before the PTPH, the defence representative must not wait for the PTPH, but instead:

- Notify the Crown Court and the prosecution forthwith.
- It is good practice for the defence to engage with the prosecution on the terms of any proposed basis of plea and, if there is to be a basis of plea, to upload the basis in writing to the DCS, with notice to the prosecution, so that a formal response can be provided in good time.
- If appropriate, apply in writing to the Crown Court for a PSR, or any other report required, setting out why such a report is required. A judge will consider the request administratively and may adjourn the case for a Plea and Sentence hearing on a date by which any report(s) will be available.

10.5. Guilty Pleas at the PTPH or subsequent hearing

Where a defendant enters acceptable pleas at the PTPH (or subsequent hearing) the court should sentence that day if that is practicable.

If there is no adequate recent Pre-Sentence Report the Crown Court should consider if one is necessary, either by statute or because of the circumstances of the case. In some instances a report will be necessary to carry out a risk assessment on the defendant or an address, or to confirm suitability for unpaid work, residence and/or curfew. If the issues can be addressed by an oral report and there is court time and advocates are available, it may be possible to proceed the same day.

Any adjournment should be to a specific date, having due regard to availability, with a time estimate, should specify any report, victim personal statement or other information required, and should specify which, if any, of the defendant or advocates can attend remotely.

In multi-defendant cases where some defendants are to be tried and other defendants have pleaded guilty careful consideration should be given to how those who have pleaded guilty can be sentenced fairly without waiting for others to be tried.

11. THE NOT GUILTY PATH: where guilty pleas are NOT indicated and charges are to be sent to the Crown Court

11.1. Magistrates Court: The sending hearing and the BCM form

The purpose of the sending hearing should be to:

- confirm that the IDPC has been served by the prosecutor;
- establish who has ownership of the case from the prosecution and defence and exchange contact details.
- facilitate and set out clear expectations regarding engagement between the prosecution and defence and between the defence and their client;
- elicit a firm/unambiguous indication of any guilty plea;
- ensure that the defendant understands that credit begins to reduce after the first hearing for any offence for which there is not an indication of a guilty plea;
- identify the issues and areas of agreement between the parties;
- establish a timetable giving directions for the case to progress in the time before the PTPH; and
- ensure the BCM form is completed as comprehensively as possible to assist all parties, the court and the Crown Court Judge.

The form "*Crown Court- Cases sent for trial or following indication of guilty plea in indictable only cases'* is commonly referred to as the BCM form. All questions are posed for good reason and it is essential that the form is completed and passed to the Crown Court. Using the form as a structure for the hearing will best secure an engaged hearing.

Experience has shown that where the BCM form is completed fully as part of an engaged and considered hearing, they are valuable to the parties and the Crown Court by:

- Recording contact information prosecution and defence to establish case ownership.
- Recording that the defendant has been advised about credit for plea and, if they are to plead guilty, giving an **unambiguous indication** to any indictable offence for which that is the case (and covering any 'basis of plea' matters) – thus securing maximum credit for plea.
- Identifying real contested issues for trial. Where the defence have had opportunity to discuss the evidence with their client (and particularly in non-custody Full Code Test (FCT) cases where there has been early service of the prosecution case) the defence should be expected to provide clear information about the real issues.
- Recording details of other evidence or actions that may be required to make the PTPH effective. Particular thought should be given to any evidence such as CCTV or BWV that may be required. Any inadequacy of the IDPC should be

identified and the Magistrates' Court should give proper directions timetabling the action required.

- Alerting the Crown Court to issues such as needs or vulnerabilities of the defendant or witnesses, or likely applications for the case to be dealt with by s.28 pre-recorded cross-examination.

11.2. To which Crown Court should the case be sent?

Where a defendant comes before the Magistrates' Court having been arrested on a warrant issued by a Magistrates' Court in another area, or where it is submitted to the Magistrates' Court that there are good reasons to send the case to a court other than the usual committal path the Magistrates' Court must, in accordance with CrimPR 9.3, consider carefully to which Crown Court Centre the case should be sent.

11.3. What the Prosecution will serve prior to the PTPH

An effective PTPH depends on:

- Service prior to the hearing of the principal parts of the prosecution case then available.
- The preferring (uploading) no less than seven days prior to the PTPH of a draft indictment This is so that the defence can arrange a conference in the seven days prior to the PTPH confident that there will be clarity on the counts faced.

A breakdown of the elements required to be served by the prosecution appears in the PTPH form so that compliance can be monitored.

For cases where the CPS have charged following an application of the Full Code Test (FCT) (that is most bail cases) the CPS have agreed to provide at the Magistrates' Court an IDPC containing the evidence available to the prosecutor when making their FCT charging decision, in order to enable early case progression, and the prosecutor will subsequently confirm the date at which service of the prosecution case has taken place. This will apply to new cases with a phased implementation.

In cases involving large volumes of material, it may not be possible to provide this within the IDPC but it must be uploaded to the DCS as soon as possible and not later than than seven days prior to the PTPH.

In Full Code Test cases the prosecution should be willing to consent to the Stage 1 date being the date of PTPH, unless there is a clear reason justifying the need for a later Stage 1 date.

For cases where the CPS have applied the Threshold Test (TT) (typically overnight custody cases) the CPS must ensure that, at minimum, the material required by the CrimPD is uploaded no later than seven days prior to the PTPH.

It is essential that any relevant ABE recording and transcript and any CCTV or BWV material relied on by the prosecution, and any Disclosure Management Document that may be appropriate, are made available as early as possible, and in any event, no less than 7 days before the PTPH. In Full Code Test cases the digital materials should have been made available before the sending hearing.

Where material is provided on a cloud-based system such as Evidence.Com or Egress accessed by a link from the DCS the prosecution must make sure that permissions allow the defence and court the necessary access.

If, exceptionally, there are good reasons why the prosecution has not served all the required materials prior to the PTPH the court will usually expect to proceed with the hearing rather than adjourn it.

11.4. Engagement prior to PTPH

Unless the defendant has been fully advised prior to the sending hearing, there is an expectation that there will be a conference with the defendant's legal advisors in good time before the date of the PTPH. Such a conference will include:

- Explaining the allegations.
- Identifying the real issues in the case.
- Identifying any missing evidence/material or lines of enquiry which may have significance to the issues in the case/
- Reviewing the adequacy of any disclosure management document and considering any reasonable lines of enquiry or data extraction issues of which the prosecution should be alerted[4].
- Reviewing any SFR1 served to identify whether it is accepted and if not what issue needs to be covered by an SFR2.
- Giving advice on plea and on credit for plea.

The defence and prosecution should engage before the day of the PTPH to review possible pleas, including to alternate offences, or other information required to ensure that the PTPH is effective.

Prosecution and Defence should complete the relevant portions of the PTPH form before the day of the PTPH.

11.5. Pre-PTPH Review by Judiciary

[4] Extraction issues should be considered by reference to AG's Guidance on Disclosure 2022 Annex A on digital material and the CPS Guide on reasonable lines of enquiry and communications evidence July 2018 approved by the Court of Appeal in R v E [2018] EWCA Crim 2426 (pending a code of practice under s.42 PCS&C Act 2022).

At some court centres where resources allow judges review cases, usually a week or so before the PTPH date. It is a decision for the Resident Judge whether to institute such a system and how to organise it or record the results.

The advantages are that relevant parties can be prompted if there are apparent omissions that will impact on the effectiveness of the PTPH.

In particular judges look for:

- Considered, concise and lawful indictments.
- The provision and content of the BCM form.
- Case summaries, usually MG5's, which accurately, fully and fairly reflect the evidence.
- The extent of the prosecution evidence provided/uploaded to DCS, and whether it has been provided in time to allow instructions to be taken.
- Whether, if important evidence is missing, such has been chased on behalf of defendants.
- Indications of what the real issues will be in a contested case.
- Explanations for any significant delay.
- Evidence of engagement, and any dialogue between the parties regarding potential pleas.

12. The Plea and Trial Preparation Hearing (PTPH)

12.1. Ensuring the PTPH is effective

The PTPH must be a robust hearing building on engagement prior to the hearing. The defendant will be arraigned unless there is good reason not to.

The judge should actively and robustly manage the case, being sufficiently familiar with the case to be able to explore the real issues and make appropriate directions, identifying where there are going to be guilty pleas and/or establishing the real trial issues where there are pleas of not guilty. If parties are ill-prepared for the PTPH, such invariably leads to the need for further, and sometime numerous, case management hearings, delayed guilty pleas or later offers of no evidence.

Within the hearing, the judge may delay arraignment so that they can be satisfied that there has been the opportunity for the defendant to be fully advised, to see any relevant multi-media material, and that appropriate engagement between the parties has taken place.

12.2. Conduct of PTPHs

Wherever possible, PTPHs should be conducted by Circuit Judges (or deputies) and the workload spread across all judges in the court, all adopting a consistent approach.

Recorders should not be asked to conduct PTPHs unless that is unavoidable and the recorder is an experienced criminal practitioner, known to the court, and with the necessary authorisations for the type of case.

12.3. Timing of the PTPH

The PTPH should take place within 28 days after sending unless, in individual cases, the Resident Judge orders otherwise, but not more than 35 days from sending[5].

PTPH should not be adjourned administratively or "listed and adjourned'. Rather the hearing should take place, whether or not arraignment is appropriate, and directions given to carry the case to its conclusion whatever that might be.

If there is good reason not to arraign, for example, there is an issue on fitness to plead, abuse, or a likely dismissal application, the PTPH should go ahead to give directions to include for the resolution of such issues and the ultimate resolution of the case.

Because it is valuable to have a represented defendant and for the instructed advocate to attend the PTPH, courts should be willing to move the date within the time limits to allow for legal aid to be confirmed or for the instructed advocate to attend BUT, particularly in multi-defendant cases, any party making application for such a move should engage with the other parties so as to be able to propose a convenient date and do so at least 2 working days before the listing.

However, applications for significant adjournments to obtain psychiatric, medical or other evidence should be refused and the case listed for PTPH so that proper directions and a trial timetable can be set to at least Stage 2 with, where necessary, a FCMH date. It is particularly important that cases where the defendant has psychiatric issues do not drift.

All judges should ensure that they are familiar with the Legal Aid Agency hotline email addresses and telephone numbers available to the Resident Judge to enable funding issues to be resolved wherever possible without need for adjournment.

12.4. Listing of PTPHs and attendance by Advocates

Judges must be given sufficient preparation and court time to conduct robust and effective PTPHs.

[5] CrimPD 3A.11 and 16 currently directs that the PTPH be listed within 28 days of sending unless the standard directions of the Presiding Judges of the circuit direct otherwise. This document is the standard direction of the Senior Presiding Judge for all circuits.

Experience has shown that, on average, an effective single defendant PTPH takes at least 20 minutes; Longer must be allocated if there are multiple defendants or complex issues, an interpreter is required, or if a guilty plea is expected to be entered and the judge proceeds to sentence.

It is recommended that no more than 10-12 PTPHs are listed in a courtroom in any one day.

It is of assistance to the CPS in limiting the number of advocates required if PTPHs can be listed in a single courtroom rather than spread over many.

S.28: If the prosecution intends to apply for s.28 cross-examination of witnesses the written application must be uploaded and the court notified in writing no less than 2 working days before the hearing, and the case should be given a time estimate of 45 minutes.

The Lord Chief Justice's guidance on remote attendance (Annex 1) says:

> "PTPHs will normally require the attendance in person of advocates for both prosecution and defence, unless the court is satisfied that (a) there has been effective engagement between the CPS and defence, (b) a conference has taken place at which the defendant has been given appropriate advice on plea, and (c) all relevant preparations have been completed in advance of the PTPH date. Experience has shown that, in order to be effective, PTPHs require early engagement and full compliance with Better Case Management principles."

12.5. The indictment

In many cases the use of the DCS has led to the uploading of a multiplicity of indictments, whether proposed amendments or fresh preferments joining counts or defendants. Amendments to CrimPR 10.2(6) and 3.32 require indictments to be marked up as to their status, and for that to be clarified by the prosecution before arraignment (and before the commencement of the trial).

Where there is more than one version of the indictment the judge must check, before arraignment (and before commencing a trial) which indictment is being proceeded with and which are not, and ensure that is recorded. It is good practice to record it in a widely shared comment, whether from the judge or court staff as may be the practice in that court centre.

12.6. The PTPH form

The PTPH form is a tool for gathering information and making and recording clear and consistent orders. It is the primary record of orders made so that there is no room for error or dispute. The form is intended to:

- Gather necessary information from the parties.
- Monitor the extent to which the prosecution provides information prior to the PTPH.
- Provide the defence with an early opportunity to identify lines of enquiry or issues with disclosure management.
- Obtain a clear, early indication of the prosecution witnesses likely to be required for trial.
- Allow the court to make, record and distribute clear orders timetabling the preparation of the case for trial. This is particularly important as it will address the need for those who have to act upon the orders to know exactly what the judge ordered.
- Allow the court to provide for any further hearings at a time when they are going to be necessary and most useful.

The form includes standard directions. These have been approved by the Lord Chief Justice and will apply unless the court expressly orders otherwise. Marking a standard order as not applicable (N/A) means that it will not appear in the final order after the judge has clicked “Save & Publish to Bundle”.

Judges are encouraged to make standard orders within a single national process, but judges may include bespoke orders within the PTPH structure.

Judges and advocates must ensure that they are familiar with the content of the Orders section, both the stage orders and the automatic orders, since these are orders of the court with which the parties must comply.

12.7. Not guilty plea entered at PTPH, or Defendant not arraigned

If a not guilty plea is entered at the PTPH (or, for some good reason, no arraignment takes place) case management should then take place utilising the structure of the PTPH form, including:

- Setting a trial (or trial of issue) date (and for appropriate cases where a Nightingale court is available or special transfer arrangements setting a trial date at those courts).
- Identifying the real issues for trial.
- Reviewing the DMD and the prosecution approach to disclosure and requiring the defence to identify any inadequacy in the DMD, identify any other reasonable lines of enquiry, and, in relation to digital devices or social media identify the level of extraction by reference to the issues in the case, including any relevant search parameters[6]. Proper information should be provided in the Defence Information section of the PTPH form.
- Considering with the parties' realistic initial witness requirements that can be determined at that stage so as to avoid witnesses being warned unnecessarily, and making then and there any directions for a witness summons or for Special Measures orders that do nor require formal application.
- Providing a timetable with appropriate directions for the necessary pre-trial preparation using the four-stage structure– and marking as not applicable directions that clearly will not apply to the case.
- Determining what, if any, further hearings should be listed to ensure the proper management of the case.
- Making provision to resolve issues such as applications to dismiss, issues of fitness to be tried, and for any FCMH that is required to take place at the time when it can be of maximum effectiveness.
- Giving the defendant(s) appropriate warnings about the importance of the defence statement, and of the likely consequences of failing to attend the trial, as recorded on the form.

Where it is not possible to arraign the defendant, for example, because an issue on abuse of process, fitness to plead, or a possible dismissal application, the best way forward is to give full PTPH directions towards a trial but to make provision for a FCMH at around the time of Stage 2 to resolve these issues. A similar approach may also be appropriate to resolve issues of joinder or severance. It is not appropriate simply to postpone giving PTPH directions pending the outcome of such matters.

[6] Extraction issues should be considered by reference to AG's Guidance on Disclosure 2022 Annex A on digital material and the CPS Guide on reasonable lines of enquiry and communications evidence July 2018 approved by the Court of Appeal in R v E [2018] EWCA Crim 2426 (pending a code of practice under s.42 PCS&C Act 2022).

Whilst parties are expected to identify the issues at Magistrates' Court sending hearings (at least in very broad terms commensurate with the information then available), substantially more information is to be expected by the time the PTPH form is completed, and judges should explore vague assertions or matters that go little further than a bare denial. CrimPR 3.5(2)(h) entitles the court to require that the issues in the case should be identified in writing and that is what the PTPH form asks. It is not acceptable for the defence to say that they will provide that information at Stage 2.

12.8. Completion of the PTPH form

Parties are responsible for the completion of their respective parts of the form and should do so in advance of the day of the hearing. Parties who fail to do so may find hearing put back until this is done.

The completion of the Orders section of the PTPH form is the judge's responsibility. It is not acceptable to leave this to court staff (or the parties). This may mean that there are stages during a PTPH or other management hearing when the court is silent whilst the judge works on the form. That is inevitable and perfectly consistent with the dignity of the court.

The orders in the PTPH form are grouped according to the 4 PTPH stages. These deliberately override the time requirements that would otherwise apply under the CrimPR. It is not necessary for the judge to put in a date for each of the individual staged orders. Inserting a single date for Stage 1, for example, applies to all the Stage 1 orders unless otherwise provided. The "date picker" facility must be used to record a stage completion date. Otherwise, the date will not be saved.

It assists the parties if orders that can confidently be ruled out at PTPH are marked as such (clicking on "N/A"). This is because the CPS will track all directions in this section unless otherwise indicated.

Chapters 10 and 11 of the 2017 "Judges' Guide to DCS" provide comprehensive guidance on conducting PTPH hearings on DCS.

12.9. Stage Dates

The stage dates should be realistic and may be adjusted to suit the case involved, and thereby stem the flow of time-consuming applications for extensions. In particular where a trial date is distant the judge may well decide to extend the time for completion of stages.

However there are restrictions on reducing the time:

- The stage 1 date cannot be reduced below the statutory periods (50 days from sending in custody cases and 70 days in bail cases) without the consent of the prosecutor BUT in increasing numbers of Full Code Test (FCT) cases the prosecution will be willing to consent to the PTPH date being the Stage 1 date.
- Likewise, the stage 2 date should not be reduced below 28 days without consent.

13. Defence Statements

Experience has shown that monitoring compliance with the Stage 2 requirements, and particularly the provision of a Defence Statement and Standard Witness Table, signals whether case preparation is proceeding appropriately.

The defence MUST by the Stage 2 date upload a defence statement or, in default, make application for an extension, or serve notice that their client will not serve a defence statement and has been advised of the possible consequences.

The responsibility lies on the instructed defence solicitor to ensure compliance with the order for service of the Defence Statement and in the event of failure the court may well require the solicitor to attend court to explain the default.

Witness requirements must be notified by using the Standard Witness Table rather than a list on the Defence Statement or other means.

14. Witness Requirements and the Standard Witness Table at Stage 2

Whilst experience has shown that time spent sorting out the real witness requirements at PTPH is well worth while, and in many cases they will not change subsequently, the PTPH takes place before the standard date for full service of the prosecution case (Stage 1). It follows that, unless the prosecution confirm at the PTPH that they have already served their full case, the defence final prosecution witness requirements cannot be provided at PTPH.

Therefore, a defendant's final prosecution witness requirements (with considered estimates of the time required) must be confirmed at a later stage using the Standard Witness Table. The SWT should also be used to provide details of defence witnesses.

Unless otherwise ordered this must be served by the defence on the prosecution at Stage 2 (uploaded to DCS Section O: Trial Documents with notice to the prosecution using the "send to CPS" button).

The standard order made at PTPH is for the provision of witness requirements by way of a Standard Witness Table. Proper information about the issue on which the

prosecution witness is required and estimates of the time a witness will be examined are also important to allow proper planning of the trial and the efficient use of court time. The Standard Witness Table is also the means by which particulars of defence witnesses must be provided.

It is NOT acceptable to notify witness requirements by email or by a list attached to the Defence Statement or by any other alternate means. A key reason for ineffective trials is the non-attendance of prosecution witnesses; getting a standardised way of notifying the prosecution of updated witness requirements is valuable and that Standard Witness Table determines the witnesses to be called at trial.

15. Further Case Management Hearings (FCMHs)

In principle a FCMH should only be listed if it is necessary in order to take a change of plea or to give directions required for an effective trial.

However, in the wake of the various challenges to the criminal justice system many courts have found that it has become valuable routinely at PTPH to order a FCMH shortly after the Stage 2 date (or in cases with long distant trial dates after Stage 4) to check that the parties are engaged and on track. A failure to serve a Defence Statement, or the provision of an obviously inadequate Defence Statement, is an indicator that preparation is not is not progressing smoothly and may be an indication that the case will not ultimately be a trial. This can be addressed at the FCMH.

Statistics support the value in doing so. It reduces ad-hoc listings sought or required and, ultimately, reduces the numbers of ineffective trials. It confirms that the defence and prosecution are engaged and that contact with the defendant is being maintained.

It is good practice to list specifically for FCMH rather than for “mention”.

16. Pre-Trial Reviews (PTRs)

The PTR should usually be no more than 5 weeks before the trial date nor less than 3 weeks before the trial. A PTR listing does not diminish the importance of the Certificate of Trial readiness to confirm whether the trial is ready OR NOT.

The fundamental purpose is to confirm whether a trial will be effective. The court will want to find out whether the case may in fact resolve by way of acceptable pleas or the prosecution not proceeding, and, if it is to be a trial, to confirm that the case will be able to proceed without delay when listed and an up-to-date time estimate.

Some listings may also be required to address specific issues such as an application to dismiss, or to set ground rules, or resolve issues such as s.41 Sexual Behaviour applications. Where possible these should be combined with the PTR.

Making provision for a Pre-trial Review hearing in the PTPH orders reduces the number of ad-hoc mentions sought or required and, particularly when the time between PTPH and trial may be long, ensures that the defence and prosecution are still engaged and that contact with the defendant is being maintained.

17. Certificates of Trial Readiness

By the time ordered, the prosecution and each defendant must file to Section O: Trial Documents a Certificate of Trial Readiness using the standard form. It is not optional.

The CoTR informs the court whether the parties are ready OR NOT, and, if not, what matters need to be addressed.

Certificates are usually required 28 days before the trial and before any date set for a PTR and provide an opportunity for the parties to say they are fully trial ready, and the PTR can be vacated. Earlier or later dates may be set in accordance with guidance issued by the Resident Judge.

In some courts the Resident Judge may set a policy that the CoTR be provided at a date after the PTR so as to confirm that any issues identified at PTR have properly been resolved.

Parties should bear in mind:

- For the defence it is the responsibility of the defence instructed solicitor to file the certificate.
- The fact that a PTR is listed is not an excuse for failing to provide a CoTR.
- If a party is not ready, or says that another party is in default, it is all the more important to file the certificate identifying the matters that need to be addressed.
- If a party does not raise an issue by CoTR filed at the correct time, when the issue should have been raised, then the court may determine that the issue should not be permitted to delay the trial.
- If a CoTR says that a case is trial-ready then (save for identified and timetabled legal argument) the court will be expect the parties to be ready to proceed directly with the opening stages of the trial.

18. Policy on FMCH; CoTR and PTR

To reduce the number of ineffective trials (and therefore the extent of over-listing required to cover ineffective trials) it is recommended that each Resident Judge set out a policy that at PTPH the judge should make orders in all cases:

- For there to be a FCMH at a date after Stage 2 and, usually, for the defendant to attend.

- For the provision of a CoTR on a date the court regards as most useful.
- For there to be a PTR between 5 and 3 weeks before the trial date and, usually, for the defendant to attend. Ground rules or s.41 hearings should be listed at the same time as the PTR unless there is good reason to the contrary.
- To utilise the CoTR to identify cases where the PTR can safely be vacated.

When the defendant is required to attend the defence advocate should normally also attend in person. However consideration should be given to permitting advocates to appear by CVP where appropriate and a direction either way should be included in the order.

The court should be ready to vacate those hearings if sufficient written assurance from all parties is received, in good time before the hearing, that they are not required.

The terms of the policy are subject to the view of the Resident Judge and local resources. Where a Resident Judge elects not routinely to list cases for PTR then an alternate process whereby the court can be satisfied of trial readiness must be adopted.

19. Further judicial orders

Where an issue arises between the PTPH and trial, and the parties have not succeeded in resolving matters between themselves such that further directions are required, the court will usually expect to give administrative directions without the need for an oral hearing.

A judicial order made administratively after the PTPH (including variations to the PTPH orders) must be made as a separate stand-alone order uploaded to DCS Section X: Judges' Orders or shown as a widely shared comment (local practices vary). The parties must also be notified, usually by email, that the order has been made. (See CrimPR 4.6 on service).

Judicial orders made at hearings in the presence of the affected parties should likewise be recorded (local practices vary) but notification is not required, the parties having been present when the order was made.

Whilst some judges would prefer to edit the dates on the PTPH orders rather than make stand-alone orders it is not practicable for the CPS or Defence solicitors to pick up alterations from an edited PTPH form. Hence separate stand-alone orders are required.

20. Applications

20.1. Presumption that they will be dealt with administratively

Many applications can be dealt with administratively without need for a hearing. The practice of requesting a "mention" to deal with a topic should cease. Where a party seeks a direction from the court (other than in cases where a standard form is provided) it is the responsibility of the litigator (instructed solicitor or CPS) to make the application in writing setting out the order sought and the reasons. If a hearing is sought the reason why it is necessary must be given.

Before making an application, a party should engage with the other affected parties to see if matters can be agreed, and if, for example, seeking a change in date for a hearing should identify dates suitable for all sides.

On occasion a barrister delegates to their clerk the task of making applications to the court, for example for permission to attend remotely. In such circumstances the barrister takes responsibility for information provided on their behalf by the clerk.

20.2. Applications for further time – Timetable extensions.

Where a party seeks extra time to comply with an order the application should propose not only a single extension but a fully revised timetable.

Before making the application, the party should engage with other parties in good time before the expiry of the period to see if agreement can be reached without need for application.

Under CrimPR 3.7 parties are entitled to agree to vary a time limit fixed by a direction provided that does not affect the date of any hearing or significantly affect the progress of the case, and the court is promptly informed. To achieve that such a newly agreed revised timetable should be recorded as a Widely Shared Comment on DCS and the court Case Progression Officer (or court officer performing that function) also notified. (CrimPR 3.7). The court should upload that notification to Section X: Directions.

Such agreements do not require the approval of the judge, but the Case Progression Officer may refer them to the judge if they are concerned that they may affect the date of a hearing.

Some courts may require a party making an application for a timetable extension to provide evidence of their failed attempt to agree the extension with the other parties as a preliminarily to the court considering the application.

If the criteria for agreement do not apply, or no agreement can be reached, the application for extension must seek not only a single extension but a revised timetable.

20.3. Bail Variation Applications

Before making an application to vary bail conditions on behalf of a defendant the representative should engage with the prosecution to see if new terms can be agreed, and an agreed application presented to the court. Although a final decision is for the judge to determine, this will significantly reduce the time required to process the application.

21. Case Progression and Compliance

All participants have a duty to prepare and conduct the case in accordance with the overriding objective; to comply with the Criminal Procedure Rules, Practice Directions and directions of the court; and at once to inform the court and all parties of any significant failure to take any procedural step required by the Rules, any practice direction or any direction of the court. (CrimPR1.2).

To aid effective communication the prosecution and defence representative should notify the court and provide details of who shall be dealing with the case at the earliest opportunity. (CrimPD 3A.24; CrimPR 3.4(2)).

Parties are expected to comply with the timetables set. If, exceptionally, an element required by a particular stage is not available that is not to be regarded as a reason for not serving the remainder.

If a party has been directed to serve, for example, a special measures application by a certain date but later decides not to pursue such an application it is not necessary to file any formal notice that the matter will not be pursued, but the court and other affected parties should be informed by uploading a note to that effect to Section Q: Applications with notice to affected parties.

Generally, parties are expected to resolve issues of compliance by engagement and to manage matters between themselves. This is facilitated by the provision of personal (not generic) email addresses. Parties are reminded that they may reach agreements to extend time under CrimPR 3.7. See above.

If a party fails to comply with a case management direction, then that party may be required to attend the court to explain the failure. This should be used when other means to gain compliance have failed and/or a pattern of failure is identified. Unless otherwise directed neither a defendant nor the other parties will usually be expected to attend such a hearing. (CrimPD I 3A.23; 26,28).

Effective case progression is essential for BCM. All courts should have robust systems in place to monitor case progression at Stage 2 and at the Certificates of Readiness stage as a minimum. Court staff should be nominated to conduct case progression as part of their role (CrimPD 3A.24) whether or not they bear the formal title of Case Progression Officer.

Since June 2016, HMCTS has provided a national framework for monitoring case progression which should be applied, in conjunction with the court's policy on listing cases for FCMH after Stage 2 and a PTR. The national framework focuses on checking:

- Stage 2 - for service of Defence Statement and Standard Witness Table – since if these are absent this usually indicates a problem with either prosecution or defence compliance. Monitoring at this stage, whether by FMCH or by the work of court staff, is widely regarded as critical to ensure that case preparation is progressing smoothly.
- Certificates of Readiness. These should provide clear information either that a case is ready for trial or identify exactly what problems remain to be resolved.

22. Change of Plea to guilty

Where a defendant awaiting trial has decided to offer pleas of guilty the defence should inform the court as soon as is practicable seeking a listing for pleas to be taken and providing a time estimate and defence advocates availability. Any basis of plea should be uploaded to the DCS with notice to the prosecution in time for it to be considered prior to the listing and any necessary engagement to take place.
.
The listing should ordinarily be a listing for plea and sentence.

It is valuable for the defence to liaise with the Probation Service in advance to discuss what report may be necessary, any particular issues that ought to be considered, and whether it can be prepared before the formal entry of plea. In such cases the defence should make an early application to the court for any necessary PSR or other report.

Where mental health issues arise, the defence should also liaise with any Mental Health Support Officer available at the court.

23. Trial listing practices and time estimates

It is for the Resident Judge to determine the trial listing principles for the court centre. Whatever the nomenclature used, the goal should be to maximise listing cases to fixed dates and minimise the numbers of cases in warned lists or floating.

To assist with this judges and advocates must strive to ensure that time estimates given are accurate, that they are updated when necessary, and that trials are completed within the allocated time.

The time estimate should be checked at each hearing. If it is clear to a party that an adjustment is required the court should be informed straightaway without waiting for the next hearing.

It follows that advocates must keep the court informed if they have other commitments such as appearances in the Court of Appeal or for s.28 hearings that may affect the listing, just as judges must keep advocates informed of days when they may be unable to sit on a case for any reason. Where there is an allocated trial judge with pre-arranged commitments they should be notified to the parties (by a Widely Shared comment brought to the attention of the parties or by other convenient means) when they are known.

Before any application to move a non-trial hearing date a party should consult with others affected to see if a convenient alternate date can be presented to the court.

24. Cases where BCM timescales and processes will be adapted

The overarching principles of BCM – getting it right first time; case ownership; direct duty of engagement; and robust case management will apply to these cases. Adaptations apply as follows:

24.1. Murder cases

Adult defendants charged with murder (and any youths jointly charged with them) should continue to be sent to the Crown Court for a hearing within 48 hours of the sending under s.115(4) Coroners and Justice Act 2009. In these cases the following procedure should apply:

- The magistrates will set only the bail application hearing.
- The bail application will be dealt with by a judge authorised to try murder cases within 48 hours of sending. Following determination of the bail application the judge will proceed to initially case manage – the degree with which this can be done will depend on the individual circumstances of the case.
- The judge will then fix the PTPH (within 35 days of sending).
- In all murder cases if they are also document heavy cases then the Crown Court Disclosure in document-heavy cases protocol will apply. The prosecution will conduct a detailed review of the case and case management issues via completion of the Notification Form (in advance of the PTPH hearing). Thereafter the prosecution will provide and regularly update a Disclosure Management Document.

- Directions for Further Case Management Hearings (FCMH) are at the discretion of the judge.

24.2. S.28 Youth Justice and Criminal Evidence Act 1999 cases

Timescales for s28 now follow BCM timescales and qualifying cases will be sent for PTPH 28 days after sending. However, the timescale for service of the prosecution case will be the same in both bail and custody cases and will be 50 days from sending. The FCMH will take place at the conclusion of the s28 hearing, unless the court directs otherwise.

24.3. Witnesses under 10

In cases which are NOT to proceed using s.28 the Protocol for witnesses under 10 applies. The PTPH should take place 14 days after sending and the prosecution should expect to be ordered to comply with the stage 1 orders within 35 days of sending.

24.4. Terrorism cases

Terrorism cases are exempt from BCM. Instead, the procedures for this category of case are set out in the CrimPD. In such cases the PTPH should ordinarily take place about 14 days after charge.

25. OTHER MATTERS

25.1. Unrepresented Defendants

Unrepresented defendants do not have access to the DCS. The prosecutor must serve on the defendant materials (including a part complete PTPH form) on paper or other appropriate media. It is the responsibility of the prosecutor to ensure that copies are available on DCS for all other parties, including the court, and to keep a record of what was served on the defendant.

After a hearing when orders are made the court must provide to an unrepresented defendant a paper copy of the final completed PTPH form or other order.

The CPS may receive communications from unrepresented defendants by email but, since an unrepresented defendant will not have a CJSM account, the CPS cannot send material to an unrepresented defendant by email.

If an un-represented defendant pleads guilty, or is convicted, the court will wish to consider whether to obtain a pre-sentence report. Such a report is likely to be of great value, but the Probation Service do not investigate assertions made by the defendant.

25.2. Prosecutors without access to DCS

As at January 2023 the authorised prosecutors able to use the DCS are the CPS, SFO, Insolvency Service, Environment Agency, and Health and Safety Executive. This list may be expanded but unauthorised prosecutors cannot use the DCS.

Prosecutors who do not have access to the DCS continue to serve their case on paper.

Word forms, including a Word version of the PTPH form, are available on the Ministry of Justice forms page. https://www.gov.uk/guidance/criminal-procedure-rules-forms. Where the DCS is not used the PTPH form should be circulated by email and provided by that route to the judge.

25.3. Police Attendance at PTPH and other pre-trial hearings

If further information from the police is required for case management or in order to complete the PTPH form, the police will be expected to provide this by email or telephone ahead of the hearing, so that realistic directions can be made.

The police must ensure that the prosecution advocate is able to contact a police representative from court by ensuring that the advocate has the email and 'phone number of a police representative who will be available to answer questions arising at the PTPH (including as to witness availability).

The court **must not** require the officer in the case, as a matter of routine, to attend PTPH. Rather the current practice should continue by which the police and prosecution agree that the officer in the case should attend the PTPH only in exceptional circumstances, for example, when the case is complex or sensitive, in order to assist with issues that may arise such as Special Measures and Disclosure.

Officers in the case should not be expected routinely to attend bail applications or case management hearings such as Pre-Trial Reviews unless the prosecution and police determine this to be necessary or the Judge, in an individual case, has so ordered. None of this affects the requirement of police officers to attend court to give evidence.

25.4. Ineffective trials

In the event that a trial is not effective an Effective Trial Monitoring form (Sometimes known as the Cracked Trial Form) must be completed identifying the reasons. Prosecution and Defence advocates must contribute so that the reasons are agreed and clearly identified so that processes may be improved.

25.5. Recording Sentence

Judges are not responsible for recording a sentence or consequential orders (and nothing should be done which suggests that judges have that responsibility or have undertaken it). Clerks record the sentence and issue the warrant and consequential orders.

However, judges should confirm the overall length of a custodial sentence (by confirming the Clerk's note on DCS) and should always make themselves available to answer any queries from court staff about the recording of the sentence.

26. Feedback

You may submit feed-back on this guide, or present ideas for improvement by email to SPJOffice@judiciary.uk

27. Annex 1 – Remote attendance Guidance

Remote Attendance by Advocates in the Crown Court. Lord Chief Justice's Guidance 14th February 2022

The pandemic has seen the increased use of technology to facilitate remote attendance at hearings and contains valuable lessons as to the relative advantages and limitations of remote attendance as compared with in-person attendance.

Judges have had to balance a large number of competing considerations when deciding whether attendance should be in-person or remote, often in challenging and fast-changing circumstances. A variety of protocols have been issued by Resident Judges at various times in different courts tailored to suit local conditions and circumstances.

This national guidance is not a prescriptive practice direction but intended simply to assist in promoting consistency and predictability of approach to the question of remote attendance in the Crown Court, whilst recognising the need for flexibility in the individual case and to suit local conditions.

It will be kept under regular review in the light of accumulated evidence and experience as to the utility and effectiveness of remote hearings.

Guidance

1. The court's duty of furthering the overriding objective by active case management includes making use of technology (CrimPR 3.2). Where it is lawful and in the interests of justice to do so, courts should exercise their powers to conduct hearings by live-link (CrimPD 3N).
2. The decision as to whether participants attend a hearing remotely or in-person is a judicial decision and a matter for the discretion of the judge in each case applying the "interests of justice" test in the light of all the circumstances. This is a statutory requirement.
3. The interests of justice are very broad and wider than the circumstances of the individual case and holding an effective hearing. They include the efficient despatch of business overall and the availability of judicial, staff, technical and other resources. The relevant circumstances properly to be taken into account may vary widely in different courts at different times.
4. It is good practice for courts to communicate regularly with their court users, prisons and others to establish ways of working which suit local conditions and to indicate how judges at a court centre are likely to approach the decisions as to remote attendance. Each court will establish a process for dealing with live-link attendance.

5. Any hearing in which a witness is to give evidence, whether in person or remotely, will normally require the advocates who are to examine or cross-examine that witness to be present in court (i.e. trials, Newton hearings, POCA hearings and appeals against conviction) unless the court otherwise orders.
6. Any hearing which a defendant is required to attend in person will normally require the defence advocate also to be physically present at court. All hearings where the defendant attends remotely will require the defence advocate to be able to communicate confidentially with the defendant immediately before and after the hearing.
7. Mentions, bail applications, ground rules hearings, CTL extensions, uncontested POCAs and hearings involving legal argument only, will generally be suitable for remote attendance by all advocates, unless the court otherwise orders.
8. PTPHs will normally require the attendance in person of advocates for both prosecution and defence, unless the court is satisfied that (a) there has been effective engagement between the CPS and defence, (b) a conference has taken place at which the defendant has been given appropriate advice on plea, and (c) all relevant preparations have been completed in advance of the PTPH date. Experience has shown that, in order to be effective, PTPHs require early engagement and full compliance with Better Case Management principles.
9. Sentence hearings will require consideration on a case-by-case basis. The matters referred to in paragraph 6 above, together with the seriousness of the charge, the intention of victims or their families to attend, the amount of public interest, and many other factors will determine whether it is appropriate for any advocate to attend in person or remotely.
10. Courts will continue to endeavour to make arrangements for listing which balance the interests of all parties, including advocates, and the need to conduct the business of the court effectively and efficiently. It must be understood that those arrangements, by time marking, or otherwise, are likely to vary from court-to-court and day-to-day according to the needs of the court, victims, defendants, and others involved and the prevailing circumstances.

General Conditions for Remote Attendance by Advocates

1. Advocates should ensure that they attend in a quiet and private location with good quality broadband and technical equipment and without distracting backgrounds. They must be able to see and be seen, to hear and be heard. The same standards of dress and conduct are required as in court.
2. Advocates who appear remotely should upload contact details and be able to operate the technical equipment involved, and, for example, to be able to upload documents before and during the hearing if required and, if necessary, to show CCTV or other digital material to the court.
3. The court must be able to communicate with all advocates appearing in a list throughout the time when that list is being heard. Email addresses and mobile

phone numbers must be uploaded or lodged with the court in accordance with the arrangements made by that court, and these devices must be switched on so that the advocate can be reached by email or text at all times up to the time when their last case in that list is complete.

4. The principle of criminal listing is, and has always been, that the advocate must be ready and available as soon as the court calls the case on. This applies equally to remote hearings. It is, and has always been, the professional responsibility of the advocate to ensure that they do not take on an inappropriate number of commitments so that they cannot comply with this. The judges hearing lists are likely to wish to help as far as they can in current circumstances; but, as has always been the case, advocates should not assume that the court will accommodate their other work without obtaining the prior permission of the judges concerned.

Lord Burnett of Maldon,
Lord Chief Justice of England and Wales
14 February 2022

28. Annex 2 – PSR before Plea Protocol – 1st October 2020

Introduction
The purpose of this document is to create a clear operational process, so that pre-sentence reports can be prepared in advance of the magistrates' court taking a plea at the first hearing. The signatories to the protocol have a responsibility to comply with it and the court and Crown Prosecution Service are encouraged to facilitate it.

Legal basis
• The parties have a duty to actively assist the court by early communication to establish the defendant's likely plea at the first available opportunity [CrimPR 3.3 (2)(a)]
• The court has a duty to obtain a pre-sentence report before considering community or custodial sentences unless it decides such a report is unnecessary [Section 156(3) Criminal Justice Act 2003]
• The statutory definition of a pre-sentence report [Section 158 Criminal Justice Act 2003] means a court may consider a pre-sentence report which it has not commissioned, to meet its duty.
• The process also preserves the taking of a guilty plea by the court, following a clear acknowledgement of guilt [CrimPR 24.7].

Benefits
The process will mutually benefit the court, defendant and criminal justice partners as it will:
• enable the court, in suitable cases, to proceed efficiently and expeditiously to sentence following a guilty plea without adjourning or standing the case down for a pre-sentence report.
• enable more flexibility in scheduling the pre-sentence report interview, which takes place prior to the hearing. The defence may ask the legal adviser, where necessary, to vary the first hearing date to ensure there is sufficient time to produce the report
• reduce the time spent physically at court, when social distancing measures are in place, therefore protecting all parties' welfare during the pandemic.

Scope
A pre-sentence report applies where:
• it is anticipated that an adult defendant, charged to appear before a GAP or NGAP hearing on bail or postal requisition, will be sentenced in the magistrates' court; for offences triable either way see Sentencing Council allocation guideline,
• a defendant is willing to indicate a guilty plea to all offences charged on the full prosecution basis.
• a defence legal representative, on behalf of their client, requests a PSR Before Plea.
This protocol does NOT apply to cases to be sent or committed for sentence to the Crown Court where CrimPD 3A.9 and guidance within the Better Case Management handbook *[Note: superceded by this BCM Revival Handbook]* should continue to apply.

Process
The process is set out in Annex A. The form used to request a Pre-Sentence Report Before Plea is attached at Annex B ("the applicable form").

Compliance
In the event of parties consistently failing to comply with their responsibilities under the protocol the matter is to be reported to the Local Criminal Justice Board.

Signatories
Probation Service: Sonia Flynn Chief Probation Officer
Law Society: Richard Atkinson & Ian Kelcey
Co-Chairs Criminal Law Committee
Approval by
Senior Presiding Judge of England and Wales
1st October 2020

Annex A
Process Before the Scheduled Hearing
The Defence Legal Representative shall:
1.1 apply for the IDPC and receive instructions from the defendant on likely plea, as soon as is reasonably practicable.
1.2 Where the plea is likely to be guilty confirm with the defendant whether the prosecution case is accepted in full.
1.3 Where the prosecution case is accepted in full, consider whether
1.3.1 the offence on the full prosecution version is likely to pass the threshold for a community sentence;
1.3.2 a pre-sentence report is likely to be necessary and if so ask the defendant if they would agree to comply with a PSR Before Plea, were this to be arranged.
1.4 Where the Defence Legal Representative is of the opinion to request a PSR before Plea, explain the PSR before Plea process to the defendant reminding them that arranging a PSR Before Plea provides no indication of any sentence and that
1.4.1 all sentencing options remain open including an immediate sentence of imprisonment,
1.4.2 the court will decide whether to consider the PSR before Plea, if one is available,
1.4.3 the court may proceed to sentence without a pre-sentence report if the court considers it unnecessary.
1.5 Where the defendant agrees to the request for a PSR Before Plea complete the applicable form and send it electronically to the Probation Service mailbox for the magistrates' court scheduled to hear the case, with an email including the URN and scheduled hearing date, entitled "PSR Before Plea", by the very latest, 3 working days before the scheduled hearing, copying in the court and CPS.

The Probation Service shall:
2.1 upon receiving an email entitled "PSR Before Plea" check without delay whether part 1 of the applicable form has been completed.

Incomplete Form
2.2 Where the form is incomplete,
2.2.1 refuse the request for the PSR Before Plea
2.2.2 complete part 2 of the form ticking "refused as form incomplete"

2.2.3 return the form to the defence legal representative and court with an email including the URN and hearing date, entitled “PSR before Plea – refused – form incomplete”

Completed Form
2.3 Where the applicable form has been properly complete
2.3.1 obtain the IDPC from Court Store
2.3.2 check whether any recent pre-sentence report exists
2.3.3 consider whether to produce a PSR Before Plea.
2.4 In deciding whether to produce a PSR Before Plea consider:
2.4.1 whether the circumstances of the offence on the full prosecution version are likely to merit at least a community order, considering sentencing guidelines;
2.4.2 whether a pre-sentence report is likely to be deemed necessary by the court. This includes in particular where there are issues involving domestic abuse, caring responsibilities, safeguarding concerns, mental health, vulnerability, complexity, alcohol or drugs.
2.5 Where a PSR Before Plea request is then refused
2.5.1 complete part 2 of the applicable form ticking “refused other reasons”
2.5.2 return the completed applicable form to the defence legal representative, CPS and court with an email including the URN and scheduled hearing date, entitled “PSR Before Plea refused”.
2.6 Where a PSR Before Plea request is then granted
2.6.1 complete part 2 ticking “granted”
2.6.2 return the completed applicable form to the defence legal representative, CPS and court with an email including the URN and hearing date, entitled “PSR Before Plea request granted”;
2.6.3 proceed to produce the PSR Before Plea in the usual way and upload to Court Store before the hearing date.

Insufficient time to produce PSR
2.7 Where the Probation Service would produce a PSR Before Plea, but there is insufficient time before the first hearing
2.7.1 complete part 2 of the form ticking “insufficient time”
2.7.2 return the completed applicable form to the defence legal representative, CPS and court with an email including the URN and scheduled hearing date, entitled “PSR Before Plea – insufficient time”, confirming the timescale in which a PSR Before Plea could be produced and requesting the court to reschedule the hearing date to a date no earlier than that timescale can be met.
2.7.3 proceed to produce the PSR Before Plea, upon being notified by the court that the hearing date has been varied to enable sufficient time to prepare the report.

The Magistrates’ court legal adviser shall:
3.1 upon a request from NPS to re-schedule the first hearing to enable the PSR before Plea to be produced,
3.1.1 promptly consider the request;
3.1.2 where the request is refused, promptly notify the defence legal representative, CPS and NPS of this;
3.1.3 where the request is granted, ensure in the normal manner that
3.1.3.1 the defence legal representative, CPS and NPS are notified of the new hearing date;

3.1.3.2 the defendant is notified of the new hearing date;
3.1.3.3 the defendant's bail is extended where appropriate.

Process at the court hearing
Magistrates' Court Legal Adviser/Court Associate shall
4.1 Where a PSR Before Plea has been produced, confirm at the pre-court meeting with the defence legal representative where available, the guilty plea indication.
4.2 Where a PSR Before Plea has been produced, highlight this to the district judge/magistrates' hearing the case in the pre-court briefing.

The Court shall:
5.1 take the plea for a summary only offence [Section 9(1) Magistrates' Courts Act 1980] or proceed to indication of plea for a triable either way offence [Section 17A Magistrates' Courts Act 1980],
5.2 proceed to consider sentence in accordance with the Criminal Procedure Rules 2015 and the Criminal Practice Direction 2015, 5.3 decide whether to "obtain and consider a pre-sentence report" prior to sentencing, by accessing the PSR Before Plea on Court Store.

ANNEX B
The form used to request a Pre-Sentence Report Before Plea
[Form not included in this extract]

29. Annex 3 – Better Case Management - Defence Timetable

<table>
<tr><th colspan="2">Defendant Charged</th></tr>
<tr><th>Custody</th><th>Bail (to NGAP court 28 days after charge)</th></tr>
<tr><td>Defence representative should:
Consider IDPC
Take instructions on bail/plea(s)/venue for trial
Apply for Legal Aid
Consider need for PSR and liaise with Probation
Notify court and CPS of contact details of representative responsible for the case.</td><td>Defence representative should:
Consider IDPC
Take instructions on bail/plea(s)/venue for trial
Apply for Legal Aid
If there is to be a guilty plea consider need for PSR and liaise with Probation (consider invoking PSR before Plea Protocol)
Notify court and CPS of contact details of representative responsible for the case; PLUS
Communicate with CPS to proactively explore pleas and issues including any additional information necessary to address them.</td></tr>
</table>

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<table>
<tr><th colspan="2">Magistrates' Court Hearing</th></tr>
<tr><td colspan="2">BEFORE court – assist the CPS complete the BCM Questionnaire</td></tr>
<tr><th colspan="2">COURT HEARING</th></tr>
<tr><td>Plea before Venue
Guilty plea – Consider need for a PSR
Bail application</td><td>Not Guilty / no indication- identify issues and agree with the CPS any necessary court directions that will assist an effective PTPH
Assist the court to finalise the BCM Questionnaire</td></tr>
<tr><td colspan="2">Magistrates send or commit to the Plea and Trial Preparation Hearing (PTPH) within 28 days after the Magistrates' Court hearing (but not more than 35 days)</td></tr>
</table>

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<table>
<tr><th>Actions Between first hearing and PTPH</th></tr>
<tr><td>If client remanded in custody arrange prison visit to take instructions
Ensure any outstanding Legal Aid issues are addressed
Hold conference with client and, where relevant, forward any basis of plea to CPS by e-mail
If a Guilty plea is now anticipated advise the CPS and court by e-mail, and liaise with Court and Probation is a PSR is required.
If NG plea is likely consider the PTPH form and draft indictment served by CPS 7 days before the PTPH
Complete the defence section of the dynamic PTPH form on DCS
The court will expect there to have been communication between the defence and CPS during this 28 day period to ensure the PTPH is effective.`</td></tr>
<tr><td></td></tr>
</table>

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Plea and Trial Preparation Hearing (PTPH)	
Guilty plea Liaise with Probation before hearing Consider if sentence can proceed Have information about timescale for availability of PSR or other reports that may be required **SENTENCE**	**Not Guilty plea** • Identify issues • Agree evidence (Section 9/10) • Identify witnesses • Advise on availability of defence witnesses and Counsel • If required, make applications e.g. Special Measures/hearsay/bad character • Be prepared and able to respond to CPS applications • **FIX TRIAL DATE** (or in complex cases adjourn for a FCMH)