



Better Case Management (BCM) Newsletter

05 January 2016

Issue 5

Happy New Year!

Welcome to the fifth BCM newsletter and the first from the new Senior Presiding Judge, Lord Justice Fulford. This newsletter provides some key information for defence practitioners.

**BCM implemented nationally from
Tuesday 5 January 2016**

Better Case Management (BCM)

The eight Early Adopter Crown Courts have shown that the key principles and processes of BCM improve the efficiency and effectiveness of Crown Court proceedings. BCM requires everyone within the CJS to work together to meet their obligations under the [Criminal Procedure Rules and Case Management Practice Direction](#).

Overarching Responsibilities for Defence Practitioners

- **Case ownership and responsibility-** The new CrimPR 3.3 states that at the beginning of the case:
 - each party must nominate someone responsible for progressing that case; and
 - tell other parties and the court who that is and how to contact that person.

- **Duty of direct engagement-** CrimPR 3.3 also requires the parties to communicate from the first available opportunity until the conclusion of the case. Therefore defence practitioners are required to discuss with the CPS their client's likely plea(s); what is agreed and what is disputed about the prosecution case; additional material or information required; and timescales for any actions.

Magistrates' Court Hearing

- **Allocation:** Magistrates will follow the [Interim guidance on allocation and committal for sentence](#) until March 2016 when the [Sentencing Council's Allocation Guideline](#) comes into force.

Where it is determined the case should be heard in the Crown Court, BCM requires:

- **Additional enquiries:** The magistrates' court will ask the parties about their communications, noting the likely plea, what is agreed, and what parts of the prosecution case are likely to be disputed. Until there is a

digital solution, such as Common Platform, this information will be recorded and sent to the Crown Court on the new “[BCM Questionnaire](#)” form (Guidance Pack for LITs on page 8).

Therefore, defence practitioners need to consider the Initial Details of the Prosecution Case (IDPC) with their client(s) **BEFORE** the allocation hearing in order to respond to these enquiries.

- **Pre Sentence Reports:** Where a guilty plea is entered or indicated the magistrates will only request the preparation of a PSR if satisfied that:
 - there is a realistic alternative to a custodial sentence; or
 - the defendant may satisfy the criteria for classification as a dangerous offender; or.
 - there is some other appropriate reason for doing so.

When in doubt as to whether the case requires a PSR, it will be for the defence practitioner to make an application to the Crown Court for a PSR, setting out the reason why one is necessary.

Further [guidance on PSRs](#) is available. (Guidance Pack for LITs - Annex 3 on page 6).

- **After allocation:** The following actions will now be expected:
 - Continued discussions with the CPS;
 - Additional client instructions if required;
 - If a guilty plea is now anticipated the defence representative must advise the CPS and court by email, and, if required, the basis for the court ordering a PSR;
 - If a Not Guilty plea is anticipated the relevant sections of the PTPH form must be completed by the prosecution and defence. The parties must exchange with each other, and share with the court, the completed PTPH form by email (or by uploading it to the DCS) **BEFORE** the hearing.

A copy of the PTPH form, the Introduction and Guidance Notes and the Standard Witness table can be found at: <http://www.justice.gov.uk/courts/procedure-rules/criminal/forms-2015>

Plea and Trial Preparation Hearing (PTPH)

This will usually be held 28 days after sending. There is a discretion (which must be carefully exercised) to vary this timescale up to a maximum of 35 days. One reason for doing so is to enable the trial advocate to attend the PTPH.

In the event of Guilty Plea(s) the court will expect to sentence at the PTPH and the defence advocate must be prepared to mitigate, if necessary with the assistance of a short oral report prepared on the day, or one prepared beforehand as a result of the magistrates ordering it at allocation or subsequently by the judge.

In the event of Not Guilty plea(s), the judge will actively manage the case and will require the defence advocate to assist by:

- Identifying the issues;
- Agreeing non contentious evidence;
- Identifying witness requirements;
- Advising on the availability of defence witnesses and advocates;

- Making, if required, applications for special measures/hearsay/bad character etc;
- Responding to prosecution applications;
- Fixing the trial date, or in complex cases adjourning for a Further Case Management Hearing.

There is a flow chart setting out the defence obligations at each stage of the BCM process in the [Guidance Pack for LITs](#) (page 8).

Working digitally

Crown Court Digital Case Systems (DCS)

BCM and DCS compliment each other. BCM is designed to operate digitally. However BCM is not dependant on DCS. Therefore BCM will be fully implemented from **5 January 2016**, whilst the programme for introducing DCS will continue until April 2016.

DCS forms a key part of the transition to a fully digital criminal justice system. There are comprehensive [training materials available](#) to external legal professionals by registering for access to both the DCS [training portal](#) and [live portal](#) and then signing up to [Learn-UpOn](#) where you can access all the desktop Quick Reference Guides and the interactive tutorial video's.

It is essential that defence firms and barristers chambers have a CJSM email address in order to comply with the Data Protection Act 1998. It will also be a requirement to have such an address by virtue of the 2015 crime contracts, but you should [sign up for one](#) as soon as possible. Increasingly, courts using the DCS will not permit service by way of paper documents.

The [BCM Defence Toolkit](#) (Guidance Pack for LITs on page 8) has information on:

- Professional Court User WiFi
- Laptops in prison and other secure environments
- Click Share
- Steps explaining how to be invited on the DCS

Legal Aid Applications and BCM

Making applications for Criminal Legal Aid as early as possible during the BCM timescale can assist with engagement between the defence and CPS in two regards:

- Earlier receipt of the Representation Order enables the litigator to engage with the other parties and instruct an advocate, with assurance that the case will be remunerated.
- The Legal Aid Agency (LAA) can only share details of the defence representative with other agencies once a grant of legal aid has taken place.

An application for legal aid can be submitted as soon as initial client instructions have been taken, either electronically (via eForms) or on paper - 88% of applications are now submitted electronically.

Benefits of using eForms include;

1. The ability to track the application's progress,
2. In-built prompts as to which fields need to be populated and
3. Automatic electronic notification of the decision.

For cases that are sent to, or are already in the Crown Court, it is only necessary for the initial application to contain information on the client's means in order for a Representation Order to be made - a further 14 days is allowed for supporting evidence to be submitted. If evidence is subsequently not supplied, the Order is not revoked; instead the client is sanctioned.

Forms missing required information or evidence will be returned to the practitioner for correction (the LAA will first attempt to contact the practitioner by telephone in an attempt to resolve the issue quickly).

Provided an application has been fully completed, a decision to grant or refuse legal aid is normally reached within 2 working days of receipt by the LAA. If the defendant has more complex financial circumstances (e.g. is self-employed), most decisions are reached within 4 working days.

If the application has been made electronically, the practitioner should receive an alert immediately after legal aid has been granted. The (paper) Representation Order will in all cases be sent thereafter by post.

Legal Aid remuneration

The Civil and Criminal Legal Aid (Amendment) (No. 2) Regulations 2015 has been amended to reflect the fact that the terminology in the pre-existing regulations will become out of date, for example there will no longer be a Plea and Case Management Hearing (PCMH).

The regulations allow for cracked trial fees to be paid in the same circumstances as they are now, i.e. after the first hearing at which a not guilty plea is entered to one or more counts and the case is set down for trial, whether this is the PTPH or a Further Case Management Hearing (FCMH).

Benefits of BCM for defence practitioners

By applying BCM principles such as early and continued engagement together with robust case management by the judiciary BCM will result in more effective and efficient processes by:

- Disposing of guilty plea cases at the first hearing in the Crown Court whenever possible;
- Reducing the number of hearings per case in the Crown Court;
- Reducing the length of trials by limiting the attendance of witnesses to those necessary to deal with the issues in dispute.

This will benefit defence practitioners because:

- All cases will be disposed of more quickly;
- The emphasis on case ownership will mean increased consideration of the advocates' availability;
- Front loading the work will result in less waste of resources, for example there will be far fewer "mentions" before trial and trials over running than at present.

Next Steps

I would urge all defence practitioners to familiarise yourselves with the CrimPR and Practice Directions which came into force on the 5 October 2015, in order fully to understand your obligations now BCM is fully implemented. Further information about how BCM is being implemented locally can be obtained through your Local Implementation Teams (LITS).

Defence practitioners have a crucial role to play and I hope you will work with the other CJ agencies and the courts to make BCM a success.

Like my predecessor, Lord Justice Gross, I will continue to update you on the progress and development of BCM through future news letters.

Lord Justice Fulford

Senior Presiding Judge for England and Wales

Further Information

More information on BCM can be found at Judiciary.gov.uk where you will find an information pack, videos and all the BCM newsletters.

In addition the LAA has produced a [Question & Answer resource](#) in response to queries raised in the BCM Early Adopter Areas, on topics ranging from applications to billing to working digitally:

Useful Links

Further information and guidance on legal aid applications can be found at:

- [Legal aid: eForms](#)
- [CRM14: criminal legal aid application form](#)
- [Crime news: avoid rejections on CRM14 legal aid applications](#)