



Better Case Management (BCM) Newsletter

12 AUGUST 2016

Issue 10

Welcome to the tenth newsletter which pulls together the key obligations on the parties that underpin BCM.

Maintaining Progress

As we all bask in this lovely weather and depart – I hope – on long-awaited summer holidays, I will take this opportunity, and in best headmaster fashion, to remind all those involved in progressing cases through the criminal courts of the importance of meeting the various critical obligations that exist under BCM. As emphasised in my previous newsletters, I have been impressed by the exceptionally hard work which has enabled the successful introduction of this notably effective new way of conducting cases. Strong collaborative working has brought about some truly significant improvements in the way we deliver justice, to the undoubted benefit of victims, witnesses, defendants, prosecutors, defence representatives, court staff and judges. The changes effected in a very short period of time have been simply exceptional.

By way of example, in recent months we have witnessed:

- A decrease by almost 50% in the number of hearings that are required to resolve a guilty plea in the Crown Court (this represents a truly substantial saving in resources);
- An increase in the number of cases committed for sentence, which strongly indicates that guilty pleas are being entered at a laudably early opportunity in the magistrates' court;
- A significant upward trend in the number of Early Guilty Pleas sentenced at the PTPH, thereby, once again, saving resources and providing a swifter result for victims, witnesses and defendants.

Notwithstanding all of these undoubted and significant successes – and at risk of sounding like a Stalinist Commissar from the early years of the 20th century – we are now in my view at a watershed moment: not only must we maintain this momentum but we must ensure these impressive cultural changes become a permanent and embedded part of our criminal justice system. Given the current political and economic uncertainties, we need to focus on what we can achieve with the resources available, in terms of limited budgets, a smaller workforce and markedly improving technology.

Against that background, I risk your patience by taking this opportunity to emphasise what are in my view the cardinal responsibilities:

File ownership

It is essential that both the prosecution and defence identify the particular person who is able to make decisions in the case, someone who can be easily contacted.

Duty of direct engagement

It is the critical responsibility of the prosecution and the defence to liaise with each other about the issues in the case from the earliest opportunity, and throughout the proceedings. Please approach this in a sensible way, making allowance for advocates being in court and ensuring there is an effective means of leaving and passing on messages, to which there must be a prompt response.

Initial Disclosure of Prosecution Case (IDPC)

As a result of concerns expressed about the content of the IDPC, I recently chaired a meeting of senior members of the criminal justice system, including the Director of Public Prosecutions, members of the Law Society, the Bar Council, the Criminal Bar Association and the Legal Aid Agency. I was very grateful for the positive and productive discussion that took place, which resulted in unanimous agreement that an amendment to Part 8 of the Criminal Procedure Rules should be requested, to the effect that prosecutors cannot, without leave of the court, refer to the contents of witness statements unless they have been served on the defence. In addition, I will be issuing guidance in the autumn which I hope will further clarify the necessary contents of the IDPC. It was agreed that it would be helpful for this ad hoc group to meet twice a year, in order to facilitate a regular joint review of the efficacy of the IDPC, including whether further changes need to be made to the Criminal Procedure Rules.

In the meanwhile, early direct engagement, if possible before the first hearing, can provide the defence with an excellent opportunity to set out for the CPS any suggested deficiencies with the IDPC, and in particular any concerns regarding the quality, sufficiency and reliability of the MG5 case summary. There can be no sensible doubt but that a well-constructed IDPC affords defence representatives with the best chance of providing comprehensive advice to the accused, thereby avoiding unnecessary adjournments and transitory not guilty pleas which later result in cracked trials.

Legal Aid

It is imperative that legal aid applications are submitted promptly and accurately, thereby avoiding delays and ensuring that meaningful engagement can occur at the earliest point in time. As I have previously broadcast, the judiciary now has a “hot line” to the Legal Aid Authority, to enable judges to resolve problems speedily, for instance to give the PTPH the best chance of being effective.

Compliance with the Criminal Procedure Rules and Practice Directions

Put simply, it is essential – for a host of reasons – that there is compliance with the Rules. Otherwise, cases will not be progressed properly and promptly.

Completion of the BCM Questionnaire

Whilst I understand the dislike on the part of some for this layer of bureaucracy, the questionnaire provides a mechanism for magistrates to begin the process of effective case management which underpins BCM, particularly by ensuring, first, meaningful liaison between the parties and, second, that the defendant's plea is indicated or taken. If a guilty plea is entered, the bench is able to consider whether to order a PSR; if the defendant pleads not guilty, the bench ought to identify and record the "real issues" in the case and any other matters which will assist future case management. The questionnaire assists the parties in their discussions prior to the PTPH and helps ensure the PTPH form is comprehensively completed, and the hearing is truly effective. It follows that the parties must ensure that as much information as possible is available to be captured on the BCM Questionnaire.

Uploading papers onto the DCS

This must happen promptly and accurately, particularly in custody cases when the defence will only have received the limited information that is provided in the magistrates' court. The police, CPS and court staff need to work effectively together in this regard, and I note that there are still some bad examples of the CPS uploading the case papers onto DCS in a significantly haphazard manner.

The PTPH hearing: appropriate listing

Judges are to be afforded sufficient court time to conduct effective PTPHs. These need to be more focussed and interrogative than the old Preliminary Hearings. Experience has shown that, on average, an effective PTPH takes at least 20 minutes; some necessarily take longer if the judge proceeds to sentence or there are difficult or complex trial issues to resolve. It follows that I am concerned to hear that some courts are listing over 20 PTPHs in one courtroom. This does not give either the judge or the parties sufficient time under BCM to identify and discuss the issues, and to undertake active case progression. This practice of "packing the list" should cease.

The PTPH hearing: ensuring it is productive

It is imperative that everyone involved in the PTPH comes to the hearing fully prepared and that the PTPH form is completed in a detailed and accurate manner. As my predecessor (Lord Justice Gross) emphasised during last year's "road shows", it is expected that judges will exercise leadership in the courtroom, actively and robustly managing each and every case, identifying guilty pleas (where that is the true position) or establishing the extant trial issues. In the latter situation, the judge needs to ensure that uncontested evidence is summarised and agreed, to avoid the unnecessary attendance of witnesses and to reduce the length of the trial. This should have the consequential benefit of freeing up earlier trial dates to everyone's benefit.

Case progression

BCM cases are now coming through to trial, and if the new procedures are functioning well, they should be far better prepared. In this context, I note the recent case progression framework issued to HMCTS Delivery Directors. It is hoped there will be far fewer examples of wasteful, ineffective trials, along with a significant

reduction in cases cracking as a consequence of late guilty pleas (the admission of guilt should have been identified far earlier in the process). The prosecution and defence share responsibility for compliance, and it is of particular importance that the witness requirements are established and communicated inter parties, as well as with the court, in order to avoid witnesses unnecessarily attending court and to ensure trial effectiveness.

Local Implementation Teams (LITs)

I have been impressed with the effectiveness of the LITs, when they are run well. By way of example, I witnessed a very productive LIT when I recently visited Reading Crown Court. In the present period during which we are seeking to ensure that BCM becomes an ingrained part of everyday case progression, the LITs have a crucial role to play in identifying and resolving local problems; providing a forum in order to agree innovation; sharing good practice; and for ensuring the National Implementation Team (NIT) provides a forum for resolving the more intractable issues. The LITs will shortly be asked to provide their views on BCM so as to assist the NIT in its objective of continuing to improve the system.

We have already initiated a review of the PTPH form and the BCM Questionnaire, along with an investigation of the various ways in which the Digital Case System (DCS) can be improved, and the order in which any changes ought to be made.

There are, of course, many improvements that – subject always to budget – we would wish to make, and it is vital that the “users” of the various systems are at the heart of any ongoing design and development work. Your views, therefore, are not only welcome but vital. Any contribution can be either on an individual basis or as part of a group, such as the LITs.

Please send any response by 31st August 2016 to:

BCM.info@judiciary.gsi.gov.uk if your comment is primarily about BCM or the PTPH or BCM questionnaire
CrimeITSupport@hmcts.gsi.gov.uk if your comment is primarily about the operation of the DCS

Digital Case System (DCS)

Please contact CrimeITSupport@hmcts.gsi.gov.uk if you have comments about the operation of the DCS or if you make suggestions for future development of the system.

There are now over 17,000 DCS users across the criminal justice system consisting of prosecutors, defence representatives, judges, HMCTS and probation staff.

The managing director of Caselines/Netmasters, the company that provides DCS, has suggested the following calculation:



The height of the Shard is 307 metres. The width of a sheet of paper is 1 / 10th of a millimetre. Therefore, the Shard is 3.07 million sheets tall. The current rate of new page additions to DCS is 515,000 per week. If each page in DCS removes 6 pieces of paper, then the run-rate is 1 shard per week. 6 pieces is the likely number of copies across prosecution, defence and the courts. If – being more conservative – each page in DCS removes 4 pieces of paper, then the run-rate is 2.7 Shards per month.

Either way, that is a very substantial quantity of paper!

In summary, there are some very good practices emerging, and I have been greatly impressed by the enthusiasm and hard work that is going in to make to make BCM a real success.

In summary:

- There is real evidence of the parties, the court staff and probation working very hard to make DCS work, thereby enabling us to achieve real digital working;
- There has been a greatly improved state of preparedness for the PTPHs;
- We have seen a substantive reduction in the number of hearings;
- The opportunity has been provided for feedback on the revised PTPH form;
- The LITs have continued to resolve local problems;
- There is a clear emerging trend of technology being used for case progression, including telephone, video and “email” hearings.

This is all very heartening, but please ensure we keep up this excellent work. BCM must not lose momentum.

Finally, I wish you all a good summer break.

Lord Justice Fulford

Senior Presiding Judge for England and Wales

Further Information

More information on BCM can be found at Judiciary.gov.uk