

PLEA AND TRIAL PREPARATION HEARINGS



Notes for Guidance

Why the Change?

There has been a wide perception that Preliminary Hearings in cases where Not Guilty pleas are expected have been held too early in the process for the Court to give more than perfunctory orders and that Plea and Case Management Hearings are either unnecessary or not held at a time when active case management could be most effective. The result has been multiple additional hearings and the development of a range of differing local protocols.

The new Plea and Trial Preparation Hearing (PTPH) and related procedures will provide a single national consolidated process to be used in all Crown Courts. It builds on the Transforming Summary Justice project in the Magistrates' Courts.

The PTPH:

- Takes place a little later in the process than Preliminary Hearings. 14, 21 or 28 days after sending (depending on Circuit) unless, in individual cases, the Resident Judge orders otherwise;
- Occurs after the Prosecution will have provided substantial information about the case and obtained details of the availability of likely prosecution witnesses. In many cases this should be sufficient to enable the Court to case manage effectively without the need for a Further Case Management Hearing (FCMH) before trial.
- Presumes that the parties will have communicated with each other prior to the PTPH and will continue to do so thereafter.

What the PTPH should achieve

An effective PTPH will

- set the trial date;
- identify, so far as can be determined at that stage, the issues for trial;
- provide a timetable for the necessary pre-trial preparation and give appropriate directions for an effective trial;
- make provision for any Further Case Management hearing that is actually required to take place at the time when it can be of maximum effectiveness.

Why the form?

The form must be used for all cases sent to the Crown Court after 1st October 2015 where Not Guilty pleas are anticipated. The form is available on paper and in pdf and Word formats on the Criminal Procedure Rules pages of the Ministry of Justice website.

The form is intended:

- To gather necessary information from the parties;
- To monitor the extent to which the Prosecution provide information prior to the PTPH;
- To allow the Court to make and record clear orders timetabling case progression in areas where the need can be anticipated; and
- To allow the Court to provide for further hearings when they are going to be necessary and most useful.

Copies of the completed form will be made available to the parties after the hearing (either on paper or electronically) to ensure the parties have a record of the orders made.

Contact Information

The provision of contact information is vital to allow proper communication between participants. The Form expressly reminds participants of their duties under the CrimPR. Parties must ensure effective cover for sickness or absence.

What the Prosecution will serve prior to the PTPH

The usefulness of the PTPH depends on:

- The lodging no less than seven days prior to the PTPH of a draft trial indictment; and
- service prior to the hearing of a substantial part of the prosecution case. This is to be served:
 - If the Defendant is on bail – by the sending hearing in the Magistrates' Court;
 - If the Defendant is in custody – no less than seven days before the PTPH.

Details of what is expected to be served are set out in the Practice Direction 3A.12 and 3A.20 and a breakdown appears in the form so that compliance can be monitored.

There may be good reasons why the Prosecution has not served all the materials listed prior to the PTPH but the Court will usually expect to proceed with the hearing rather than adjourn it.

When will a further hearing be required?

After the PTPH there will be no Further Case Management Hearing (FCMH) before the trial unless:

- The Court anticipates a guilty plea;
- It is necessary to give directions for an effective trial; or
- A Ground Rules hearing is required (CrimPR 13.3);

And the Court directs a FCMH is necessary to further the overriding objective.

At the PTPH the Court may order a FCMH but usually will do so only in one of the following cases:

- Class 1 cases¹;
- Class 2 cases which carry a maximum penalty of 10 years or more;

¹ For classification of Cases see Criminal Practice Direction XIII Listing B: Classification.

- Cases involving death by driving (whether dangerous or careless), or death in the workplace;
- Cases involving a vulnerable witness;
- Cases in which the Defendant is a child or otherwise under a disability, or requires special assistance;
- Cases in which there is a corporate Defendant or an unrepresented Defendant;
- Cases in which the expected length of the trial is such that a FCMH is desirable and any case in which the trial is likely to last longer than four weeks;
- Cases in which expert evidence is to be introduced;
- Cases in which there are likely to be linked criminal and care directions in accordance with the 2013 Protocol.

The Court may also order a FCMH:

- Where the Defendant requests a hearing to enter a guilty plea;
- Cases in which an application to dismiss or stay has been made;
- Cases in which arraignment has not taken place for any reason.

See CrimPD I. 3A.21

The Defendant will not usually be required to attend FCMHs unless there is good reason or statute requires it. Without good reason a Defendant in custody will not be produced and no interpreter will be provided for a Defendant on bail who wishes to attend.

Standard Witness List

In many cases it will be possible for the Defence to provide details of witness requirements at the PTPH and should expect to do so.

However it is recognized that in many other cases that will not be possible and therefore a Defendant's full witness requirements (with considered estimates of the time required) will have to be given at a later stage. For this purpose there is now a Standard Witness List to be used to notify witness requirements. It must be served at the same time that the Defence Statement is due (whether or not a Defence Statement is also actually served).

Where a full Standard Witness List cannot be completed at the PTPH the Defence should complete the section "Witness Requirements Known at PTPH"

The Court's Directions

The Form must be used as the primary record of the orders made at PTPH and copies should be made available to the parties. All Case Progression Officers should obtain a copy.

The Form provides a range of possible standard orders that the Court may make but, of course, the Court may revise these or make other bespoke orders as necessary.

It is hoped that in most cases the Court will be able to set only set three dates for the parties to complete their pre-trial preparation rather than setting a multiplicity of dates:

A first date for service of the bulk of Prosecution materials

A second date for service of the Defence Statement and other

Defence materials

A third date – for necessary responses to the Defence materials and any further evidence

The draft orders have been grouped in a way intended to facilitate such an approach.

Directions are numbered and a two or three letter code appears alongside the directions for ease of reference.

Directions within the form

The form includes a number of standard directions. These have been approved by the Lord Chief Justice and will apply unless the Court expressly orders otherwise.

Special measures orders that are not contentious may be made at the PTPH without further formality.

Administrative Directions

Where further directions are required pre-trial and the parties have not succeeded in resolving matters between themselves, the Court will usually expect to give administrative directions without the need for an oral hearing.

What if a party fails to comply with the directions? Compliance Courts

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 (CrimPR1.2)

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. Unless otherwise directed a defendant in custody and other parties to the case will not usually be expected to attend (CrimPD I 3A.23; 26-28)

What if the Defendant is expected to plead guilty?

The form is intended for those who will be pleading Not Guilty.

If, after sending, the Defendant decides to plead guilty the Defendant should not wait for the PTPH but instead inform the Court and apply, if it is justified, for the preparation of a Pre-sentence Report identifying the issues such a report is needed to address. The Court will consider that request administratively and may adjourn the case for a Plea and Sentence hearing on a date by which any report that has been ordered will be available. A Court ordering the preparation of a Pre-sentence Report will usually direct a “Fast Delivery Style” report unless good reason for a full report has been identified.

Improving the Form

Court users who would like to propose adjustments to the form or to suggest additional, or re-phrased, standard orders are encouraged to make suggestions to info@.....