



Better Case Management (BCM) Newsletter

23 MARCH 2016

Issue 7

Welcome to the seventh newsletter providing further feedback on BCM following national implementation on 5 January 2016.

10 out of 10 for BCM!

Recently two areas reported that all the cases listed at the PTPH (10 in Wales and 9 in the South West) resulted in early guilty pleas as a result of BCM. Although this is merely a snapshot, it is very heartening news. It is to be stressed that this involves no more, and no less, than defendants who are guilty of the offence or offences pleading guilty at an earlier rather than a later stage. This is to their advantage, not to mention to the advantage of the rest of the criminal justice system, including victims and witnesses.

There are a number of interesting developments to report:

- There are a number of other areas with markedly improving early guilty plea rates at the Plea and Trial Preparation Hearing (PTPH), such as Wessex, West Midlands, Yorkshire and Teesside.
- Changes in file preparation by the police have resulted in a notably enhanced quality in the MG5s and relevant and focused evidence has been provided at an early stage.
- Changes by the CPS in terms of giving advice to the police about charging decisions and providing more information to the defence, along with identifying a particular owner for each case who personally responds to enquiries, have resulted in greater engagement between the parties before the case reaches the Crown Court.
- As most defence practitioners have considerable competing demands on their time, fewer court appearances are generally viewed as beneficial. In a world of fixed fees, the early delivery of the evidence and timely communications help ensure that unnecessary work is avoided.
- Local Implementation Teams (LITs) have proved to be highly effective, with representation from all agencies including criminal defence practitioners. The LITs have been well placed to resolve local difficulties such as inadequate disclosure, obstacles to obtaining access to defendants in custody and listing issues.
- BCM has reinforced the need for the Legal Aid Agency's (LAA) to have an effective relationship with practitioners and other agencies, and prompted an examination of the present processes in order to identify areas of potential improvement.
- In a number of areas, the completion of the BCM Questionnaire by district judges and legal advisers is working well, with issues and the likely plea being highlighted early. The court, as a result,

is better able to put in place special arrangements such as interpreters. Historically, information of this kind would not have been available until the preliminary hearing. By providing this in advance of the PTPH, the court is given the best chance of resolving the case (if there is a guilty plea), or it is able to provide any relevant case management (if there is to be a trial), at that single hearing.

- Crown Court Probation teams are working with Resident Judges to develop processes whereby a greater number of reports are available on the day of the PTPH than hitherto, in order to assist the court to pass sentence on the day if that is consistent with the interests of justice.

The most significant changes brought about by BCM are not those that take place in court but those that have happened before the case arrives at the Crown Court. Those changes are ones made by the police and the CPS in their management of the cases long before they reach a court.

HHJ Collier QC- Leeds Crown Court

As already indicated, the underlying aim of BCM is for those that are guilty to plead at the earliest opportunity. It is assuredly not the aim to apply improper or inappropriate pressure on defendants, but instead to identify, at an early stage, whether the case is to be contested. Nearly a quarter of all Crown Court trials collapse or “crack” on the day of trial.¹ Not only is this an unsupportable waste of finite public resources, but it delays justice for victims and witnesses as well as for defendants. It damages public confidence in the CJS and leads to “over listing” (e.g. floaters and warned lists) which is a costly means of ensuring that we fully utilise the court estate.

There is still work to do, as the issues set out below demonstrate.

Issues Arising

- Feedback suggests defendants are frequently and unnecessarily bailed to police stations several times before a decision is made on whether proceedings are to be brought. This can lead to the unfortunate result that they are unrepresented when charged and their lawyers are only instructed at the first court hearing.
- There needs to be consistent early engagement between the CPS and the defence. There are reports of the CPS failing to respond to defence requests, particularly when generic CPS email accounts are used which prevents the identification of the allocated CPS lawyer.
- Similarly, there have been instances of a lack of engagement by defence solicitors before the first hearing in the magistrates’ court, in part as a result of a delay in obtaining legal aid prior to the first hearing, and partly through a lack of engagement by defendants with their solicitors. In addition, poor client engagement means that solicitors sometimes fail to take instructions sufficiently (or at all)

¹ National Audit Office report: Efficiency in the criminal justice system – 1 March 2016

prior to the PTPH, with judges having to put the case back until later in the list in order for the PTPH be effective.

- It is important that the BCM Questionnaire is completed accurately and in as much detail as possible, including the full postal address of the defence solicitors.
- It is necessary to review and monitor the efficient running and management of any magistrates' remand courts. Sufficient time should be allocated to enable the court to go into detail as to the issues in the case and whether further evidence needs to be served.
- Similarly, sufficient time needs to be allowed for the PTPH to ensure Stage 1 directions, where necessary, are properly addressed.
- Full and proper use of the prison-to-court video link for PTPHs remains an issue in some courts. This is being addressed through the National Implementation Team.
- The expectation of 'on-the-day' sentencing is providing a significant challenge for the probation service, who are working to meet the new demands. Pre-Sentence Reports (PSRs) need to be focused on the less straightforward cases, and particularly those when custody, although an option, is by no means inevitable.
- The National Probation Service is working to design processes to ensure that reports that are requested for the first time after the case is sent to the Crown Court are ordered by the court and prepared by the probation service in time for the PTPH.
- One important direction contained within the PTPH form is that the Certificate of Readiness **must** be completed and filed 28 days before trial (or by the date set at the PTPH).

PTPH Form

- Delays have resulted because PTPH forms are not filed with the court until the day of the hearing or, indeed, during the hearing itself.
- Multi-handed cases can also create delay as the PTPH form needs to be completed for each defendant.
- Until recently, in courts where the Digital Case System (DCS) is being used, the PTPH form could only be amended if it was downloaded and then reloaded onto the system. This was a significant source of irritation.

It follows that many of the present issues will be overcome with DCS cases by the revised ONLINE form which is now in use and can be accessed at:

<http://www.justice.gov.uk/courts/procedure-rules/criminal/forms-2015>

All courts and prosecutors (whether or not they are using the DCS) must use the revised ONLINE version of the PTPH form.

The new form is much easier to use within the DCS, particularly in multi-defendant cases, and the opportunity has been taken to draw on the experiences of the early adopters to re-order and improve it.

The key changes are:

- The new online form, as set out above, does not need to be downloaded and reloaded. The parties and the court can complete information within the DCS separately, simultaneously or collaboratively.
- The form can be auto-populated with information from CPS IT systems, thereby improving speed and accuracy.
- Some additional information is required from the parties, in order to reflect lessons learnt from the early adopters.
- The court's section has been re-ordered in order to reflect, in a more logical way, the sequence of events as they unfold during a PTPH. Some of the standard orders have been revised and additional orders added following requests from the early adopter courts.

The Digital Case System (DCS)

BCM and DCS undoubtedly complement each other. BCM is designed to operate digitally, but is not dependant on the DCS.

- DCS is recognised to be an excellent system which is easy to use.
- The audit trail provided by DCS is proving effective and the parties are adapting to the new systems, albeit there is an inevitable transitional phase whilst cases under the old and the new systems progress through the courts simultaneously.
- The Crown Courts are receiving the BCM Questionnaire form via the Store; it is then uploaded onto DCS where it may be viewed by the judiciary, which is good and effective use of the Store.
 - DCS should offer substantial cost and time benefits both to the LAA and to defence lawyers when it comes to billing cases. However, too few BCM bills have so far been received to draw any firm conclusions.
 - We are aware that Wi-Fi is still not available in a number of courts.
 - Some representatives only seek to be joined to the DCS case file shortly before the PTPH takes place. This makes it difficult for the advocates to be invited to peruse the papers and for the judge to see a properly completed PTPH form in good time, thereby undermining the principle of early engagement.
 - In the near future case papers will only be accessed through the DCS and court Wi-Fi. This will have a significant impact on everyone involved in the process, including the judiciary. Accordingly, every Recorder must sign up for a CJSM account prior to sitting at any Crown Court. Guidance will shortly be issued to Recorders explaining this process.

Conclusion

“The key benefit of BCM is that cases are truly being considered by the police and reviewed by the CPS at an early stage. It used to be the case that the CPS would advise charge, then see the evidence and on occasions discontinue. By that stage the case had reached the Crown Court unnecessarily. The defence are getting more information earlier and here in Reading are having conferences earlier rather than on the day of the PTPH.”

HHJ Cutts QC- Reading Crown Court

When there is strong judicial leadership and when there is positive engagement by all those involved in the case, we are seeing truly impressive results, which have obvious benefits for all those involved.

The objective in the near and medium term is to address the outstanding issues set out above, and otherwise to ensure that the cultural and process changes involved with BCM and DCS become second nature. This is best achieved through the LITs, with whom I strongly encourage continued and substantive engagement.

Lord Justice Fulford

Senior Presiding Judge for England and Wales

Further Information

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